THE BIHAR AND ORISSA CODE.

VOLUME II.

Bengal Acts, 1862 to 1911.

CONTENTS.

								PAG
Preface	•••	•••	•••	•••	***	•••	•••	ii
Chronological	. Тавье с	F ENACTM	ENTS PRINTEI) IN THIS	VOLUME		•••	ili
Enactments in	extenso:	: BENGAL	Acrs. 1862 re	1911				1

PREFACE,

THIS, the second edition of the Bihar and Orissa Code, Volume II, contains Bengal Acts of the years 1862 to 1911 which are still in force in Bihar and Orissa. Bengal Acts solely applicable to the district of Sambalpur are included in the Supplement and are not printed in this Volume.

Bengal Acts passed up to the 1st day of April, 1912, applied to Bihar and Orissa, but there are no Bengal Acts of 1912 which are still in force in Bihar and Orissa.

It was originally intended to include in this volume Bengal Acts applying to Bihar and Orissa as modified up to the 31st December, 1931. It has, however, been found possible to include amendments to such Acts made up to the 31st December, 1932.

J. A. SAMUEL,

Deputy Secretary to Government.

Chronological Table of Enactments Printed in this Volume.

[With respect to the entry of repealing enactments in column 4 of this Table, the following has been the ordinary practice:—

- (1) where an exactment has been totally repealed more than once, the latest repealing exactment has alone been entered;
- (2) where an enactment has been partially repealed and afterwards totally repealed, the total repeal only has been entered: a repeal of the unrepealed portions of an enactment is treated as a total repeal;
- (3) partial repeals covered by later partial repeals have not been entered;
- (4) local repeals covered by later local repeals have not been entered;
- (5) where an enactment has been locally repealed and afterwards repealed by an enactment whose operation is unrestricted, the later repealing enactment has alone been entered.]

1	2	3	4	5
Yoar.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.
		Beng	AL ACTS [1].	
1862	3	The Bengal Land-revenue Sales (Amendment)	Short title given, Act I of 1903	3
		Act. 1862.	S. I rep., Act 12 of 1873.	
			Preamble and s. 2 rep. in pt., Act 1 of 1903.	
			S. 3 and Sch. rep. in pt., Ben. Act 2 of 1906, s. 16 (4) (ii).	
1862	7	The Bengal Land-reve-	Short title given, Act 1 of 1903	9
		nue Resumption Act, 1862.	S. 1 rep., Act 12 of 1873.	
			Ss. 3, 1 rep., Act 16 of 1874.	
1864	4	The Bengal Districts Act, 1864.	Short title given, Act 1 of 1903	13
39	5	The Canals Act, 1864	S. 19 rep., Act 12 of 1873	17
			Preamble and ss. 1, 2, 3 rep. in pt., s. 17 and Sch. rep., Act 1 of 1903.	

^[1] The expression "Ben. Act," or "Bengal Act" as used in this Code, means an Act made by the Lioutenant-Governor of Bengal in Council—cf. the Bihar and Orissa General Clauses Act, 1917 (B. and O. Act 1 of 1917), s. 4 (5), in Volume III of the Code—and applicable to the Province of Bihar and Orissa.

iv

Chronological Table of Enactments Printed in this Volume—contd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.
	•	Benga	L Acts—contd.	,
1864	7	The Salt Act, 1864	Amended as to jurisdiction of Magistrates and references to Police Acts, Ben. Act 1 of 1873,	27
			Ss. 2, 42, and Sch. rep., Act 12 of 1873.	
			S. 9 rep., Act 12 of 1882.	
			Ss. 3, 40 rep. in pt., ss. 35, 36, rep., Act I of 1903.	
1865	4	The Bengal Prevention of Inoculation Act.	Short title given, Act 1 of 1903	39
		1865.	S. 4 rep. in pt., Act 1 of 1903.	
**	8	The Bengal Rent Re- covery (Under-tenures)	Short title given, Act 1 of 1903	45
		Act, 1865.	Ss. 2, 18 rep., Act 12 of 1873.	
			S. 1 rep., in pt., Act 1 of 1903.	
1866	3	The Bengal Legislative Council (Witnesses) Act,	Short title given, Act I of 1903	53
		1866.	S. 6 rep. in pt., Act 1 of 1903.	
1866	7	The Bengal Embankment Act, 1866.	Short title given, Act 1 of 1903	59
			Rep. (except in the Orissa Division), Ben. Act 6 of 1873.	
			S. 10 rep. in pt., Act 1 of 1903.	
1967	2	The Bengal Public Gambling Act, 1867.	Short title given, Act 1 of 1903	67
		.,	S. 1 am., Ben. Act 3 of 1897, ss. 1 (3), 4.	
			Ss. 1, 14, 16 rep. in pt., s. 17 rep., Act 1 of 1903.	
"	3	The Bengal Ports Act, 1867.	Short title given, Act 1 of 1903 S. 20 rep., Act 12 of 1873. Ss. 7, 11, 12, 13, rep., Act 12 of 1875. Ss. 1, 15, 17, Sch. III, rep. in pt., Act 1 of 1903.	75
1868	3	The Bengal Land-revenue Settlement Act, 1868.	Short title given, Act 1 of 1903 S. 2 rep., Act 12 of 1873.	83
	<u> </u>		<u>l</u>	

Chronological Table of Enactments Printed in this Volume—contd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.
,		Benga	L Acts—contd.	
1868	4	The Bengal Alluvion (Amendment) Act, 1868.	Short title given, Act 1 of 1903 S. I rep., Act 12 of 1873.	87
,,	7	The Bengal Land-revenue Sales Act, 1868.	Short title given, Act 1 of 1903	91
			S. 11 substituted, Ben. Act 2 of 1871.	
			S. 29 and Sch. E. rep., Act 12 of 1873.	
			Ss. 1, 2, 6 rep. in pt., ss. 15 to 28 rep., Ben. Act 7 of 1880.	
			Supplemented, B. and O. Act 4 of 1914.	
			Ss. 3, 4 rep. in pt., s. 9, Schs. A, B, C, D rep., Act 1 of 1903.	
1869	1	The Bengal Crueity to Animals Act, 1869.	Short title given, Act 1 of 1903 Supplemented, Ben. Act 3 of 1869.	99
			S. 8 rep., Act 12 of 1873.	
			Ss. 1, 5 am., ss. 5A, 5B, 5C ins., Ben. Act 3 of 1900.	
			S. 9 am., Act 1 of 1903.	
,,	2	The Chota Nagpur Ten- ures Act, 1869.	S. 22 rep., Act 7 of 1870	105
"	3	The Bengal Cruelty to Animals (Arrest) Act, 1869.	Short title given, Act I of 1903	113
**	7	The Bengal Police Act, 1869.	Short title given, Act 1 of 1903	117
			S. 1 rep., Act 1 of 1903.	
			S. 5 am., Act 38 of 1920.	

Chronological Table of Enactments Printed in this Volume—contd.

.1	2	3	4	. 5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.

BENGAL ACTS—contd.

1870	6	The Villago Chaukidari Act, 1870.	S.s. 21, 26 am., other ss. supplemented, Bon. Act 1 of 1871.	121
			Ss. 6, 8, 9, 22, 41, 43, 44, 45 am., ss. 9A, 9B, 46B ins., Ben. Act I of 1886.	
			"District Magistrate" substituted for "Magistrate of the District" and "Magistrate," ss. 1, 5 rop. in pt., ss. 3, 4, 11 to 14, 35, 39, 42 to 44, 62, Sch. B am., ss. 3A, 46A, ins., ss. 36, 37 rep., s. 64 rep. in pt. and am., Bon. Act 1 of 1892.	
			[1] Rep. except the preamble, ss. 1, 48 to 61 (Pt. 11), 66, 67, 69, Sehs. C, D, B, and O. Act 3 of 1922.	
1871	1	The Bengal Village Chaukidari Act, 1871.	Short title given, Act I of 1903	143
			S. 6 rep., Act 5 of 1897.	
			[1] Rep., B. and O. Act 3 of 1922.	
>>	2	The Bengal Land-reve- nue Sales (Amendment) Act, 1871.	Short title given, Act 1 of 1903	147
1873	1	The Bengal Salt Act, 1873.	Short title given, Act 1 of 1903	151
**	4	The Bengal Births and Deaths Registration	Short title given, Act 1 of 1903	155
		Act, 1873.	Supplemented, B. and O. Act. 7 of 1922, Ch. XI.	
27	6	The Bengal Embankment Act, 1873.	Rep. [except ss. 12, 13, 21 (provise) and 26 to 29 and Sehs. B to E], Ben. Act 2 of 1882.	161
			Ss. 12, 21, 26 am., Ben. Act 2 of 1882.	
-	1	l		<u> </u>

^[1] This repeal takes effect in respect of a union in which Part III of B. & O. Act 3 of 922, printed in Vol. III of this Code, is in force.

vii

Chronological Table of Enactments Printed in this Volume—contel.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.

BENGAL ACTS-contil.

1875	5	The Bengal Survey Act, 1875.	S. 57 rep. in pt., Ben. Act 7 of 1880	169
			S. 1 rep. in pt., Act 1 of 1903.	
1876	1	The Bengal Muhamma- dan Marriages and Divorces Registration Act, 1876.	Short title given, Act 1 of 1903	191
,,	3	The Bongal Trrigation Act, 1876.	Ss. 42, 73, 85 rep. in pt., Ben. Act 7 of 1880.	205
			S. 2, Sch. A rep., s. 95 am., Act 1 of 1903.	
			Ss. 74, 75, 75A, 79 subs., s. 93 am., Schs. B, C rep., B. and O. Act 3 of 1948.	
**	7	The Land Registration Act, 1876.	S. 55 am., Ben. Act 5 of 1878	237
			S. 82 rep. in pt., Ben. Act 7 of 1880.	
			S. 1 rep. in pt., s. 2, Sch. rep., Act 1 of 1903.	
			Ss. 3, 13, 15, 24, 28, 30, 31, 53, 64, 70, 77, 83 am., ss. 5, 23 rep. in pt., ss. 19A, 19B, 53A, 74A ins., s. 25 rep., Ben. Act 2 of 1906;	
			Ss. 7 (e), 8 (e) rep. locally, and ss. 8(h), 18(a), (l) rep. in pt. locally, when order issued, Bon. Act 2 of 1906;	
	(S. 61 am., B. & O. Act 3 of 1916.	
1878	5	gistration (Amendment)	Short title given, Act I of 1903	273
	-	Act, 1878.	S. 2 rep., Act 1 of 1903.	
****	-). 	

viii

Chronological Table of Enactments Printed in this Volume—contd.

1	2	3	4	5	
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.	
BENGAL ACTS—contd.					
1879	9 1	The Court of Wards Act,	S. 63 rep., Ben. Act 7 of 1880	279	
		1879.	Ss. 16, 23, 48, 49, 50, 55, 58 am., ss. 23A, 58A, 65A and new s. 63 ins., Ben. Act 3 of 1881.		
			Ss. 3, 6, 7, 10, 11, 12, 49, 60 am., a. 48 rep. in pt., s. 60A ins., Act 4 of 1892.		
			S. 17 rep., Act 10 of 1892, 9. 9.		
			S. 1 rep. in pt., Act 5 of 1897.		
			S. 2 rep. in pt., Act 1 of 1903.		
			Ss. 9, 56 rep. in pt. ss. 10A to 10E, 13A-34A, 59A, 60B, 64A ins., s. 62 rep. Ben. Act 1 of 1906.		
			S. 50 am., Ben. Act 2 of 1909.		
			S. 6 (e) am., s. 15 rep. in pt., B. & O. Act 3 of 1916.		
1880	5	The Bengal Vaccination Act, 1880.	Supplemented, Ben. Act 3 of 1885, ss. 92 to 96.	305	
			Ss. 3, 4, 13, 28 am., ss. 13A, 29A, 29B ins., Sch. I added, Bon. Act 2 of 1887.		
			Preamble and s. 1 am. s. 2 am., and rep. in pt., s. 33 supplemented, Ben. Act 2 of 1890.		
			Ss. 2, 3 am., and rep. in pt. locally, ss. 4 to 8, 10, 13A, 15, 16, 19, 28, 29A, 29B, 33, Schs. A, B, C, E am., Ben. Act 2 of 1911.		
1880	6	The Bengal Drainage Act, 1880.	Ss. 3, 26, 28, 37, 45, 48, Sch. B am., 26A, 36A, Pt. IV a, 44A, 44B, 51A to 51 J ins.; 30, 31, 38, 42(b), 43(b), 44(3) rep. in pt.; 29 rep., Ben. Act 2 of 1902.	335	
			S. 1 rep. in pt., ss. 60 to 63 rep., Act 1 of 1903		
,			S. 39 am., B. and O. Act 3 of 1916.		

8

Chronological Table of Enactments Printed in this Volume—contd.

		3 4		3		5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.		
		Benga	L Acts—contd.			
1880	9	The Cess Act, 1880	Ss. 9, 10, 13, 42(1), 43, 44, 45, 46(3), 108, Schs. A and C am., s. 40A ins., Ben. Act 2 of 1881.	369		
			Ss. 64A, 64B ins., Act 7 of 1881.			
			Ss. 4, 38, 82, 83, 98, 109 am., ss. 9, 40, 108 rep. in pt., ss. 110 to 181 and s. 182 (a), (b), (c), (e), (q) and (h) rep., Bon. Act 3 of 1885, s. 2.			
			S. 1 rep. in pt., s. 29, Example B, am., Act 1 of 1903.			
			S. 109 am., Ben. Act 5 of 1908, s. 64.			
			S. 4 rep. in pt. and am., sq. 12, 14, 15, 16, 22, 23, 36, 37, 41, 44, 46, 49, 54, 57, 102, 104, 105, 112, 113 am., Ch. IIA, ss. 52A, 72A, 91A ins., s. 94 rep. in pt., Ben. Act 4 of 1910.			
			Ss. 10, 39 rep., ss. 108, 109 rep. (in districts in which Bon. Act 3 of 1885 is in force), ss. 2, 6 (Prov.) am., s. 9 subs., ss. 4,11, 42(2) and (3), 46(1), 83, 88, 100, Schs. D, E am., ss. 12, 35 am., ss. 37E to 37G subs., ss. 37H (1) 37I am., s. 45A ins., ss. 54, 70, 80, 83 am., s. 101 rep. in pt., B. and O. Act 1 of 1916.			
			Ss. 108 subs., s. 109 am., s. 138A ins. (in districts in which Ben. Act 3 of 1885 is not in force), B. and O. Act 1 of 1916.			
1881	2	The Bengal Cess (Amend- ment no. 2) Act, 1881.	Short title given, Act 1 of 1903	447		
**	3	The Bengal Court of Wards (Amendment)	Short title given, Act 1 of 1903	451		
		Act, 1881.	S. 3 rep. in pt, Act 10 of 1892, s. 9.			
			S. 1 rep. in pt., s. 2 rep., Act 5 of 1897.			
1882	2	The Bengal Embankment Act, 1882.	S. 16 rop., s. 17 rep. in pt., Act 9 of 1890	457		
			Ss. 1, 2, 46 rep. in pt., Act 1 of 1903.			

Ss. 61, 73 am., B. and O. Act 3 of 1916.

Chronological Table of Enactments Printed in this Volume-contd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by logislation.	Page.
		Benga	L Acts—contd.	
1883	3	The Bengal Tramways Act, 1883.	S. 1 rep. in pt., Act 1 of 1903	489
			S. 41 am., Ben, Act 1 of 1904.	
1885	1	The Bengal Ferries Act, 1885.	S. 18 rep. in pt., Act 2 of 1901	303
			S. 26 am., B. & O. Act 2 of 1914.	
			[1] S. 35 subs., B. and O. Act 3 of 1922.	
			S. 4 rep., s. 35 am., B. and O. Act 7 of 1922.	
>>	3	The Bengal Local Self- Government Act of	S. 45 and Sch. II am., Act 1 of 1903	521
		1885.[2]	Ss. 1, 6, 25, 73, 103 rep. in pt., 83, 5, 7, 10, 11, 13, 15, 17, 19, 22, 25 to 27, 29, 32, 33, 35, 36, 44, 48, 50, 52, 53, 56, 58 to 61, 63, 65, 67, 73, 82, 86, 91, 99 (and heading thereto), 100, 104 to 111, 114 to 119, 130 to 134, 138, 139, 142, 144, Seh. II, am., ss. 16, 24, 34, 72 rep., s. 18 rep. in pt. and am.; ss. 18A, 19A, 23A, 26A, 29A, 35A, 41A, 53A, 64A, 65A, 65B, 78A, 86A to 86M, 88A, 99A, 118A to 118D ins., Ben. Act 5 of 1908	
			Ss. 52, 53A am., s. 53 am. and rep. in pt., B. and O. Act 1 of 1916.	
			S. 9 rep., in pt., B. and O. Act 5 of 1920.	
and the last of th				

^[1] This amendment takes effect in respect of a union in which Part IV of B. &. O. Act 3 of 1922 is in force.
[2] The title of this Act now is "The Bihar and Orissa Local Self-Government Act of 1885". see B. & O. Act 1 of 1923, s. 2 printed in Vol. III of this Code.

Chronological Tuble of Enactments Printed in this Volume—contd.

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1	2	3	4	. 5		
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.		

BENGAL ACTS—contd.

1885	3	Government Act of 1885 [1]—concld.	Ss. 5, 18, 18A, 52(2), 53(d), 62, 89, 138, 142, 144, 145, 146, am., ss. 36, Chs. II of Pt. I (ss. 37 to 44) 111 of Pt. II (ss. 56 to 58), III of Pt. III (104 to 119), 133 rep., ss. 73, 130, 131, 132, 138, 146, rep. in pt., B. and O. Act 3 of 1922.[2] Title, preamble. ss. 1, 5 am.; ss. 6 to 29A subs.; ss. 31, 32, 33, 35, 35A, 37, 38, 39, 41, 45, 46 am.; s. 46A ins., ss. 47 to 49 subs.; ss. 52, 53, 53A, 54 to 60, 62 to 64, 64A, 65, 65A am.; s. 65B subs.; s. 66 am.; s. 67A ins.; s. 71 am.; s. 72 ins.; ss. 74, 77, 80, 81, 84, 85, 86, 86A, 86C am.; s. 86D subs.; ss. 91, 91, 91B ins.; ss. 95, 97, 98, 99A, 100, 101, 112, 113, 115 to 118, 120 to 125, 127, 130 am.; s. 131, 132, subs.; ss. 137, 138, 139, 142, 143, 144, 146 am.; ss. 33, 51, 53, 64A, 68, 69, 70, 78A, 86G, 88, 99, 99A, 124, 130, 138, 146 rep. in pt.; ss. 128, 129, 136, Sch. 111 rep., B. and O. Act 1 of 1923. S. 46 am., B. and O. Act 3 of 1932. Short title given, Act 1 of 1903. S. 2, 8 rep., Act 5 of 1897. S. 1 rep. in pt., Act 1 of 1903.	597
44445	2	The Bengal Vaccination	Rep., B. and O.Act 3 of 1922. [2] Short title given, Act 1 of 1903	601
1887	ند	(Amendment) Act,	S. 1 rep. in pt., s. 3 am., Act 5 of 1897.	
1889	2	The Private Fisheries Protection Act, 1889.	Supplemented, Act 4 of 1897	605
1890	2	The Bengal Vaccination (Amendment) Act, 1890.	Short title given, Act 1 of 1903 Ss. 1, 4 (3) rep., ss. 2, 3 am. Act 1 of 1903.	609

[1] The title of this Act now is "The Bihar and Orissa Local Self-Government Act of 1885", see B. & O. Act 1 of 1923, s. 2, printed in Vol. III of this Code.
[2] This repeal takes effect in respect of a union in which Part III of B. & C. Act 3 of 1922 printed in ibid is in force.

xii

Chronological Table of Enactments Printed in this Volume—contd.

1,	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.
	BENGAL ACTS—contd.			
1892	1	The Bengal Village- chaukidari (Amend- ment) Act, 1892.	Short title given, Act 1 of 1903 S. 3 rep., in pt., Act 5 of 1897.	613
			Ss. 2 (1), 6, 12 rep., Act 1 of 1903.	
1895	3	The Land Records Maintenance Act, 1895.		617
,,	8	The Bengal Sanitary Drainage Act, 1895.	S. 1(3) rep., Act 1 of 1903	631
1896	1	The Protection of Muhammadan Pilgrims Act, 1896.	Ss. 11 and 12 rep., Act 14 of 1927	645
1897	3	The Bengal Rain Gamb- ling Act, 1897.		651
**	5	The Estates Partition Act, 1897.	Ss. 41, 102 to 103 and 110 am., in pt., B. and O. Act 3 of 1916.	657
1898	3	The Bengal Tenancy (Amendment) Act, 1898.	S. 1 rep., in pt., s. 11 rep., Act 1 of 1903	703
		(Amendment) Act, 1686.	Rep., in Orissa Division; B. and O. Act 2 of 1913.	
1899	2	The Bengal Civil Court Amins Act, 1899.	Short title given, Act 1 of 1903	707
1900	3	The Bengal Cruelty to Animals Act, 1900.		711
1902	2	The Bengal Drainage (Amendment) Act, 1902.	••••	715
1903	1	The Bengal Tenancy (Validation and Amendment) Act, 1903.		719
1904	1	The Bengal Tramways (Amendment) Act, 1904.		723
**	2	The Bengal Public Parks Act, 1904.	••••	727
>>	3	The Bengal Settled Estates Act, 1904.	Ss. 7 and 16(5) rep., in pt.; Act 38 of 1920.	733
1905	3	The Bengal Smokenuisances Act, 1905.		755

xiii
Chronological Table of Enactments Printed in this Volume—contd.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.
		Benga	L Acts—contd.	
1906	1	The Bengal Court of Wards (Amendment) Act, 1906.	••••	763
"	2	The Bengal Land Registration (Amendment) Act, 1906.		767
,,	3	The Bengal Disorderly Houses Act, 1906.		773
1907	1	The Bengal Tenancy (Amendment) Act, 1907.		777
1908	5	The Bengal Local Self-Government (Amendment) Act, 1908.	••••	789
,,	6	The Chota-Nagpur Tenancy Act, 1908	Ss. 47 and 248 am., s. 244 subs.; B. and O. Act 4 of 1914.	809
			S. 265 (1) am., Act 38 of 1920.	
			Figures "1908" added after the words "Code of Civil Procedure"; "V of 1908" for "XIV of 1882" and "Bihar and Orissa Public Demands Recovery Act, 1914" for "Public Demands Recovery Act, 1914" for "Public Demands Recovery Act, 1895" substituted; ss. 1(2), 3, 14(1), 16, 19, 26, 29, 35, 43, 46, 47, 49, 61(4), 64(3), 73(2), 79(3), 81, 85, 87, 89(1), 90, 91(1), 94(1), 118, 127, 132, 137, 139, 151, 163, 164(2), 166, 177, 181, 199(3), 209(1), 210(3), 211, 212, 213(1), 215(3), 218, 224, 229, 230, 238, 241(2), 248, 256, 258 and sub-heading thereto, 264(2), 265 am.; ss. 50(2), 80(2), 106(2), 170(2), 267 rep. in pt.; ss. 20, 63 and sub-heading, 214, 261 subs.; new ss. 9A, 23A, 51A and sub-heading, 74A, 87A, 100A, 139A, 181A, 213A, Ch. XVIA, (s. 229A), 230A ins., B. & O. Act 6 of 1920. Ss. 3, 100A, 139, 264 am., B. & O. Act 5 of 1923.	
			S. 49 am., s. 50 subs., B. & O. Act 3 of 1929.	

xiv

Chronological Table of Enactments Printed in this Volume—concid.

1	2	3	4	5
Year.	No.	Short title.	How repealed or otherwise affected in Bihar and Orissa by legislation.	Page.
		Bengal 2	Acts—concld.	
1909	2	The Bengal Court of Wards (Amendment) Act, 1909.	••••	917
,,	3	The Chota-Nagpur Encumbered Estates (Amendment) Act, 1909.	••••	921
1910	4	The Bengal Cess (Amend- ment) Act, 1910.	••••	927
1911	2	The Bengal Vaccination (Amendment) Act, 1911.	••••	933
>>	3	The Bengal Local Government Act, 1911.	••••	939
**	4	The Chota-Nagpur Encumbered Estates (Amendment) Act, 1911.	••••	943

BENGAL ACT 3 OF 1862.

[The Bungal Land-Revenue Sales (Amendment) Act, 1862.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. (Repealed.)
- 2. Limitation.
- 3. Fees to be paid at the rates mentioned in the Schedule.
- 4. Act to be read as part of Act 11 of 1859. Schedule of Fees.

THE BIHAR AND ORISSA CODE.

VOLUME II.

BENGAL ACTS OF 1862 TO 1911, IN FORCE IN THE PROVINCE OF BIHAR AND ORISSA OTHER THAN ACTS SOLELY APPLICABLE TO THE DISTRICT OF SAMBALPUR.

BENGAL ACT 3 of 1862.

[The Bengal Land-Revenue Sales (Amendment) Act, 1862.] [1]

(23rd April, 1862.)

An Act to amend Act 11 of $1859[^2]$ (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency).[3]

Whereas it is expedient to extend the period allowed for the registry Preamble. of * *[4] tenures * *[5] and to alter the scale of fees on certain applications for the opening of separate accounts for shares of entire

as that Act -see Vol. I of this Code.

The Act has been extended, by notification under the Scheduled Districts Act, 1874

The Act has been extended, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to the following Scheduled Districts, namely:—
The Districts of Hazaribagh, Ranchi, Palamau and Manbhum and the pargana Dhalbhum and the Kolhan, in the District of Singhbhum, in the Chota Nagpur Division—
see Vol. IV, Part III of this Code.

The Act is in force in the Sonthal Parganas—see Vol. IV, Part IV of this Code; but its application is barred in the district of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) in Vol. I of this Code.

[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

[5] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

Sambalpur.

[4] The word "under," which was repealed by the Amending Act, 1903 (1 of

1903), in Vol. I of this Code, is omitted.

[5] The words "and farms," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. 1-see Vol. I of this Code.

LOCAL EXTENT.—Since this Act is (see s. 4, post, p. 4) to be taken and read as part of the Bengal Land-revenue Sales Act, 1859 (11 of 1859), it has the same local extent

(Secs. 1-4. Schedule.)

estates, for deposit of money or Government securities, and for registry of under-tenures and farms; It is enacted as follows:-

1. Repeal of ss. 45 and 59 of the Benyal Land-revenue Sales Act, 1859 (11 of 1859). Rep. by the Repcaling Act, 1873 (12 of 1873).

Limitation.

2. [1]

Applications for the registry of tenures created after the passing of this Act must be made within three months of the date of the deed constituting the tenure.

Fees to be paid at rates mentioned

3. The Collector on the part of the Government shall be entitled to demand from applicants under * *[2] sections 15 and 16, sections 40, 43 and 44, of Act 11 of 1859,[3] fees not exceeding the rates specified in Schedule in the Schedule to this Act annexed, which Schedule shall be taken as part of this Act; and applications under the said sections shall not be received unless the said fees are tendered therewith.

Act to be 4. This Act shall be taken and read as part of the said Act 11 of read as part of Act 1859.[3] 11 of 1859.

SCHEDULE OF FEES.

- 1. (For filing an application under section 10 or section 11 of Act 11 of 1859 for opening a separate account for a share of an entire estate.) -Rep. by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (4).
 - 2. For filing an application—

for a deposit of money or Government securities under section 15 of the said Act—half per cent. of the amount deposited;

for any interest on Government securities so deposited, drawn by the Collector-half per cent. of the amount drawn.

For filing an application for withdrawal of a deposit under section 16 of the said Act-half per cent. of the amount withdrawn.

^[1] The first two paragraphs of s. 2, which were repealed by the Amending Act, 1903

¹ Ine nrst two paragraphs of s. 2, which were repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, are omitted. They ran as follows:—
"Applications under ss. 40, 43 and 44 of Act 11 of 1859, for registry of tenures and farms created before the passing of Act 11 of 1859, must be made within three years of the passing of this Act.

Application for the registry of tenures existing at the time of the passing of this Act, but created after the passing of Act 11 of 1859, must be made within three months of the passing of this Act."

[2] The words and figures "creations 10 and 11" were repealed for the Tenuty Inc. 11.

^[2] The words and figures "sections 10 and 11," were repealed by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (4), printed post, p. 769. [3] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Schedule.)

- 3. For filing an application, under section 40, 43 or 44 of the said Act, for the registration of an under-tenure or farm
 - if the annual rent of the under-tenure or farm do not exceed 1,000 rupees—at the rate of five per cent. on the rent:
 - if the annual rent of the under-tenure or farm exceed 1,000 rupees—at the above rate up to 1,000 rupees, and at one per cent. on all above that amount.

BENGAL ACT 7 OF 1862.

(THE BENGAL LAND-REVENUE RESUMPTION ACT, 1862.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. (Repealed.)
- 2. Suits for resumption of land held free of assessment to be tried in the ordinary Civil Courts; so also claims to hold land free of assessment.
- 3, 4. (Repealed.)

BENGAL ACT 7 OF 1862.

(THE BENGAL LAND-REVENUE RESUMPTION ACT, 1862.)[1]

(7th May, 1862.)

An Act to repeal section 30 of Regulation 2, 1819[2] (for modifying the provisions contained in the existing Regulations regarding the resumption of the revenue of lands held free of assessment under illegal or invalid tenures, and for defining the right of Government to the revenue of lands not included within the limits of estates for which a settlement has been made).

Whereas by section 30 of Regulation 2, 1819, [2] it is enacted that Preamble. certain suits preferred in a Court of Judicature regarding lands held, or claimed to be held, free of assessment, shall be referred for investigation to the Collector, and that similar suits may be preferred in the first instance to the Collector; and whereas such reference of suits is unnecessary and causes inconvenience and delay in their decision, and it is advisable that such suits should be preferred and disposed of exclusively in the ordinary Courts of Civil Judicature; It is enacted as follows:-

- 1. [Repeal of s. 30 of the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (2 of 1819)]. Rep. by the Repealing Act, 1873 (12 of 1873).
- 2. All suits preferred by proprietors, farmers or talukdurs to resume Suits for the revenue of any land held free of assessment, as well as all suits preferred by individuals claiming to hold land exempt from the payment free of of revenue, shall be instituted, heard and determined in and by the assessment and claims Courts of Civil Judicature, like ordinary civil suits, and under the to hold rules and subject to all the provisions contained in Act 8 of 1859 (for exempt simplifying the procedure of the Courts of Civil Judicature not established from bu Royal Charter), [3] and not otherwise.
- 3, 4. [Application of Act to pending suits; saving of proceedings Civil Courts. held under s. 30 of the Bengal Land-revenue Assessment (Resumed Lands) Regulation, 1819 (2 of 1819) before passing of Act]. Rep. by the Repealing Act. 1874 (16 of 1874).

revenue to be tried in

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I-see Vol. 1 of this Code.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Ranchi, Palamau and Manbhum, and Pargana Dhalbhum in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, part III of this Code.

It is also in force in the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Sonthal Parganas—see Vol. IV, Part IV; but its applications of the Son

tion is barred in the district of Angul, by the Angul Laws Regulation, 1913 (3 of 1913),

s. 3(2), in Vol. I of this Code.

[2] The Bengal Land-Revenue Assessment (Resumed Lands) Regulation, 1819. It is printed in Vol. I of this Code.

[3] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877. The present Code

of Civil Procedure is Act 5 of 1908, and this reference should now be taken to be made to the latter Code-see s. 158 thereof.

BENGAL ACT 4 OF 1864.

(THE BENGAL DISTRICTS ACT, 1864.)

CONTENTS.

PREAMBLE.

Lieutenant-Governor may alter the limits of existing zilas.

BENGAL ACT 4 of 1864.

(The Bengal Districts Act, 1864.)[1]

(20th April, 1864.)

Whereas it is expedient to amend Act 21 of 1836[2]; It is enacted Preamble. as follows:-

It shall be lawful for the Lieutenant-Governor of Bengal from time Lieutenantto time to alter[8] the limits of existing zilas in any part of the provinces Governor subject to the control of the said Lieutenant-Governor.

may alter the limits of existing zilas.

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. 1-see Vol. I of this Code.

LOCAL EXTENT.—This Act applies to the whole of the former Province of Bengal—
see the enacting clause. The Act has been declared, by notification under the Scheduled
Districts Act, 1874 (14 of 1874), s. 3, to be in force in the districts of Hazaribagh,
Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District
of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III of this Code.

It is also in force in the Southal Parganas—see Vol. IV, Part IV of this Code; but
its application is barred in the District of Angul, by the Angul Laws Regulation, 1913
(3 of 1913) s. 3 (2) in Vol. I of this Code.

(3 of 1913), s. 3 (2), in Vol. I of this Code.

[2] The Bengal Districts Act, 1836. It is printed in Vol. I of this Code.

Act 21 of 1836 gives power to create new districts. Power to alter the limits of districts is given by the present Act, and power to alter the limit of Collectorships is given by the Bengal Land-revenue (Assistant Collectors) Regulation, 1821 (4 of 1821), s. 8 (1), in Vol. I of this Code. Power to transfer districts from one Division to another is given by the Bengal Revenue Commissioners Regulation, 1829 (1 of 1829), s. 2, in Vol. I of this Code.

[3] For a list of orders made under this Act see the Bihar and Orissa Local

Statutory Rules and Orders, Vol. I, Part VI.

BENGAL ACT 5 OF 1864.

(THE CANALS ACT, 1864.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Interpretation.
- 2. What navigable channels may be rendered subject to provisions of Act.
- By whom navigable channels may be made.
 Mode of obtaining land for the purpose.
- 4. Bar of suit against Government.
- Tolls to be paid on lines of navigation subject to Act. Proviso.
- 6. Lieutenant-Governor may fix and alter rates of tolls.
- 7. Publication of rates of toll at every toll-house.
- 8. Lieutenant-Governor to appoint persons to collect tolls, who may farm collection.
- 9. Payment of tolls how enforced.
- 10. Penalty for evasion of toll.
- 11. Rules relating to lines of navigation.
- 12. Publication of such rules.
- 13. Appointment of supervisor with power to remove obstructions.
- 14. Mode of exercising such power.
- 15. Supervisor may forbid construction of bandels, etc.
- 16. Penalty for causing obstruction to line of navigation.
- 17. (Repealed.)
- 18. Offences by whom punishable.
- 19. (Repealed.)
- 20. Short title.

SCHEDULE. (Repealed.)

BENGAL ACT 5 of 1864.

(THE CANALS ACT, 1864.)[1]

(8th June, 1864.)

An Act to amend and consolidate the law relating to the collection of tolls on canals and other lines of navigation, and for the construction and improvement of lines of navigation, within the Provinces under the control of the Lieutenant-Governor of Bengal. [2]

Whereas it is expedient to amend and consolidate the law relating Preamble. to the collection of tolls on * *[3] canals and lines of navigation

*,[4] and to authorize the collection of tolls on such other lines of navigation as may hereafter be rendered subject to the provisions of

For a list of channels to which the Act has been so applied, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

The Act has been declared, by notification under the Scheduled Districts Act, 1874

(14 of 1874), s. 3, to be in force in the districts of Hazaribagh, Ranchi, Palamau and Manbham, and Pargana Dhalbhum and the Kolhan in the district of Singhbum, in the Chota Nagpur Division, see Vol. IV, Part III of this Code, but its application is barred in

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), an Vol. 1 of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

REGULATION, 1889 (5 of 1898), 8. 5, IN VOL. 1 of this Code.

Other Enactments.—As to canals, see also the following enactments:—
the Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code.
the Bengal Embankment Act, 1866 (Ben. Act 7 of 1866), post, p. 59;
the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), post, p. 161;
the Bengal Irrigation Act, 1876 (Ben. Act 3 of 1876), post, p. 205; and
the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), post, p. 457.
As to the transfer of Bihar and Orissa Canals by the East India Irrigation and Canal Company, see the East India Irrigation and Canal Act, 1869 (32 & 33 Vict., c. 7), printed in the Collection of Statutes relating to India, 1913, Vol. I, page 416.

The Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), does not apply to any embankment, land or watercourse which is under the operation of the present Act--see s. 91 of the Act of 1882, post, p. 483.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[3] The word "the" in the premuble, which was repealed by the Amending Act, 1903 (1 of 1903), in Vol. 1 of this Code, is omitted.

[4] The words " specified in the Regulations and Acts in the Schedule to this Act annexed," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[1] LOCAL EXTENT .-- This Act was passed for the whole of the former Province of Bengal (see the title), and applies to navigable channels notified under s. 2 or authorized under s. 3.

(Secs. 1-3.)

this Act, and to provide for the construction and improvement of lines of navigation; It is enacted as follows:

Interpretation.

1. The following words shall have the several meanings hereby assigned to them, unless where a contrary intention shall appear from the context, that is to say :--

" Vessel."

the word "vessel" shall include any ship, barge, boat, raft, timber, bamboos, or floating materials, propelled in any manner:

the words "line of navigation" shall mean any navigable channel " Line of navigation." subject to the provisions of this Act:

" Channel." the word "channel" shall include any river, canal, khal, nala, or waterway, whether natural or artificial:

" Person."

the word "person" shall include any company, association, or body of persons, whether incorporated or not.

(Number and gender.) Rep. by the Amending Act, 1903 (1 of 1903).

What navigable channels may be rendered subject to the provisions of Act.

By whom navigable channels may be made.

2. It shall be lawful for the Lieutenant-Governor of Bengal, from time to time, by notification[1], to that effect published in the Calcutta Gazette, to declare that the provisions of this Act shall apply to any navigable channel specified in such notification;

and from and after such publication the provisions of this Act shall apply to, and be in force as regards, such navigation channel * *[2]

3. It shall be lawful for the Lieutenant-Governor of Bengal from time to time, to authorize[3] any person to make and open any navigable channel, or to clear and deepen any navigable channel, and to stop any watercourse, or make any tracking path, or do any other act necessary for the making or improvement of any such channel; and any navigable channel made under this section shall be rendered subject to the provisions of this Act in the manner prescribed in the last preceding section.

Mode of obtaining land for the purpose.

The Government of Bengal may take possession, as for a public purpose, of any land that may be necessary for the execution of any of *[4] the above-mentioned works, under the provisions of

[3] For an order made under s. 3, see the Bihar and Orissa Local Statutory Rules

and Orders, Vol. I, Part VI. [4] The words and figures "Act 6 of 1857 (for the acquisition of land for public purposes) or of 'in s. 3, which were repealed by the Amending Act, 1903 (1 of 1903).

are omitted.

^[1] For a list of notifications issued under s. 2, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. J. Part VI.
[2] The rest of s. 2, which was repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, is omitted.

(Secs. 4-8.)

- *[1] Act *[2] in force for the taking possession any of land for public purposes. [8]
- 4. No action or suit shall be brought against the Secretary of State Bar of suit for India in Council, or the Government, in respect of any injury or against Government. damage caused by, or resulting from, any act done under the last preceding section.
- 5. Tolls at such rates as shall be fixed in manner hereinafter Tolls to be mentioned shall be paid in respect of all vessels entering upon, or passing paid on lines along any of the lines of navigation subject to the provisions of this of naviga-Act:

Provided that such tolls shall be payable only so long as such line Proviso. of navigation shall be open.

6. The Lieutenant-Governor of Bengal may fix, and from time to Lieutenanttime alter, the rates at which such tolls[4] shall be levied:

Governor may fix and alter rates

Provided that no toll shall be levied, and no alteration of any rate of tolls. of toll shall have effect, until notice shall have been published in the Calcutta Gazette, for such period as the said Lieutenant-Governor may fix, of the intention to levy or alter such toll, and of the rate and place at which such toll is to be levied.

- 7. Notification of the rates of toll and of the places of collection Publication shall be at all times exhibited to public view at every toll-house where of rates of toll at every toll is levied under this Act, in the English, Urdu and Bengali toll-house. languages.
- 8. The Lieutenant-Governor of Bengal shall appoint such Dersons as he may think fit to collect tolls under this Act, and it shall be appoint to lawful for any person so appointed to farm[6] the collection of tolls persons to

- who may

- [1] The word "other" in s. 3, which was repealed by the Amending Act, 1903 (1 of collection. 1903), in Vol. I of this Code, is omitted.
- [2] The words "that may now or hereafter be" in s. 3, which were repealed by ibid, are omitted.
- [3] See now the Land Acquisition Act, 1894 (1 of 1894), printed in General Acts, 1887-97, Ed. 1928, p. 213.
- [4] For a list of orders made under s. 6, fixing rates of tolls, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.
- [5] As to the recovery of sums due from a farmer or his surety, see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6), Sch. I, in Vol. III of this Code.

(Secs. 9-11.)

to any other person, with the sanction of the Government of Bengal or to employ any other person in such collection.

The person to whom the collection of tolls may be farmed out, or who may be employed in the collection of them, shall have power to collect and be authorized to receive them, in the like manner as any person appointed as aforesaid.

Payment of tolls how enforced.

9. If any toll due under the provisions of this Act in respect of any vessel shall not be paid on demand to the person authorized to collect the same, it shall be lawful for such person to seize such vessel, and any furniture thereof, and to detain the same;

and such person shall, within twenty-four hours of such seizure and detention, report the same to the nearest Collector or Deputy Collector of the district in which the seizure has been made, or other public officer duly authorized by Government in that behalf;

and on receipt of this report the Collector, Deputy Collector or other officer as aforesaid shall publish a notice appointing a day for the sale of the said vessel and any furniture thereof.

The sale shall be held at some period not less than fifteen days from the date of the publication of notice of sale; and if the toll and also any expenses occasioned by non-payment be not paid, or sufficient cause for non-payment be not shown, at or before the time of sale to the Collector, Deputy Collector or other officer as aforesaid, such officer shall sell the vessel and furniture seized, or so much thereof as may be necessary to pay the toll and also any expenses occasioned by non-payment.

So much of the property seized as may not have been sold, and so much of the sale-proceeds as may be in excess of the sum necessary for satisfying the toll and for defraying the expenses occasioned by non-payment, shall be returned to the person in charge of the vessel.

Penalty for evasion of toll.

10. Any person who shall refuse or evade, or attempt to evade, any toll due under this Act shall be punished, on conviction before a Magistrate, with a fine which may extend to fifty rupees, or with simple imprisonment in lieu of fine which may extend to one month.

Rules relating to lines of navigation. 11. It shall be lawful for the Lieutenant-Governor of Bengal from time to time to make rules[1] not repugnant to any law in force and to repeal, alter and amend the same, for the management of any line of navigation subject to this Act, and for regulating the conduct of persons employed for any of the purposes of this Act; and the

^[1] For a list of rules made under ss. 11 and 12, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 12-13.)

Lieutenant-Governor may affix fines as penalties for the infringement of such rules not exceeding fifty rupees for any one infringement, or five rupees a day for any continuing infringement.

Such rules may contain directions for any of the following amongst other matters :-

for determining the tonnage of vessels and their measurement;

for fixing the number and the width of vessels to be allowed to pass into, or out of, or through, any line of navigation at one time or abreast:

for determining the length of time during which vessels may remain stationary on any line of navigation, and the amount of demurrage to be paid by vessels remaining stationary beyond such time;

for regulating the mode in which and the places at which tolls are to be levied under this Act:

for the removal of sunken vessels and obstructions; and for the storing and disposal of the cargo of vessels seized under this Act.

12. Rules shall not be passed until the same shall have been published Publication in the Calcutta Gazette for a period of six weeks, and after that time of such the rules[1] shall be published as passed, with such alterations (if any) as to the Lieutenant-Governor of Bengal shall seem fit.

The rules so published as passed shall not have effect until the expiration of two weeks after such last publication; and all rules so published shall, until the same be repealed or altered, be of like effect as if they were inserted in this Act.

Copies of all rules, in the English, Urdu and Bengali languages, shall be exhibited to public view at every place where toll is collected.

13. It shall be lawful for the Government of Bengal to appoint[2] Appointany person to be the supervisor of any line of navigation subject to the provisions of this Act; and such person shall be empowered to cut down with power and remove any tree which may have fallen or may be likely to fall to remove into such line of navigation, and to remove any sunken vessel, and to prevent or remove any other nuisance or obstruction to navigation, of whatever description, whenever he may think it necessary.

supervisor obstruction.

^[1] For a list of rules, made under ss. 11 and 12, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI. [2] For a list of orders made under s. 13, see ibid.

(Secs. 14-18.)

Mode of exercising such power.

14. Whenever such supervisor shall consider that the cutting down and removal of any tree or the removal of any other obstruction is necessary, he may in cases of emergency at once remove the same, and may for that purpose enter on any private property.

In cases not of an emergent nature, he shall serve a notice in writing on the owner or occupier of such private property, directing him to remove the same within a reasonable time.

If the owner or occupier cannot be found, notice may be served by notification to be affixed in some conspicuous place in the nearest village.

If the owner or occupier shall not remove the obstruction within the time given in the notice, the supervisor may proceed to remove it himself and may for that purpose enter on any private property.

Payment of all expenses of such removal may be enforced by the sale of the thing removed in the manner provided for the recovery of tolls in section 9 of this Act.

Supervisor may forbid the construction of bandels, etc. 15. Whenever in the opinion of such supervisor the construction of any bandel or other contrivance for fishing, or for any other purpose, in any line of navigation, is likely to cause obstruction to the free and safe transit of such line of navigation, he may, by a notice in writing to be served on the owner or person in charge of such bandel or other contrivance, or (if such owner or other person cannot be found) to be affixed at some conspicuous place in the nearest village, forbid the construction of such bandel or other contrivance.

Penalty for causing obstruction to line of navigation.

- **16.** Any person who shall wilfully cause or shall aid in causing any obstruction to any line of navigation, or any damage to the banks or works of such line of navigation, or who shall wilfully omit to remove such obstruction after being lawfully required so to do, shall be punished on conviction before a Magistrate with simple imprisonment which may extend to one month, or with fine which may extend to fifty rupces, or with both, and shall also be liable to pay such fine as may be sufficient to meet all reasonable expenses incurred in abating or removing such obstruction, or in repairing such damage.
- 17. (Recovery of fines.) Rep. by the Amending Act, 1903 (1 of 1903).

Offences by whom punishable.

18. If any person shall be guilty of an offence against the provisions of this Act on any line of navigation subject to this Act, such offence shall be punishable by any Magistrate having jurisdiction over any district or place adjoining such line of navigation, or adjoining either side of that part of the line of navigation in which such offence shall be committed:

(Secs. 19-20.)

and such Magistrate may exercise all the powers of a Magistrate under this Act, in the same manner, and to the same extent, as if such offence had been committed locally within the limits of his jurisdiction, notwithstanding the offence may not have been committed locally within such limits;

and in case any such Magistrate shall exercise the jurisdiction hereby vested in him, the offence shall be deemed, for all purposes, to have been committed locally within the limits of his jurisdiction.

- 19. (Indemnity for certain acts done heretofore in the collection of tolls, etc.). Rep. by the Repcaling Act, 1873 (12 of 1873).
 - 20. This Act may be cited as "The Canals Act, 1864".

Short title.

SCHEDULE OF REGULATIONS AND ACTS REPEALED.

Rep. by the Amending Act, 1903 (1 of 1903).

BENGAL ACT 7 OF 1864.

(THE SALT ACT, 1864.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Short title.
 - 2. (Repealed.)
 - 3. Interpretation.
 - 4. Unlicensed manufacture of salt prohibited.
 - 5. Penalty for such manufacture.
 - 6. Confiscation of salt and materials.
 - 7. Board of Revenue to grant licenses on certain conditions.
 - 8. Proprietor and others to give notice to Police of unlicensed salt-works on their lands.
 - (Repealed.)
 - 10. Licensed manufacturer to provide proper warehouse.
 - 11. Lieutenant-Governor may prescribe rules and impose penalties. Proviso.
- 12. Regulation of possession and transport of salt.
- 13. Rawanas by whom and how granted.14. Rawana not to be granted without payment of duty.
- 15. Limitation of possession or transport of salt. Proviso
- 16. Penalties for possessing or transporting salt without rawana.
- 17. Punishment for transporting salt in excess of quantity specified in rawana.
- 18. Confiscation of salt conveyed otherwise than as allowed.
- 19. Salt transported beyond limits not to be again brought within them without a special rawana.
- 20. Salt sold or lost within limits to be certified on back of rawana.
- 21. Penalty for omitting to certify sale or loss.

 22. If the whole quantity be sold within limits or whole or part carried beyond, rawana to be delivered up.

- 23. Inspection of salt-works by police-officers.
 24. Arrest of persons carrying salt liable to confiscation.
 25. Salt sezied may be weighed by police-officer.
 26. Persons arrested to be forthwith taken before Magistrate and detained or admitted to bail.

 27. Magistrate may issue search-warrant on application.
- 28. Rules regarding entry of house by force.
- 29. Magistrate may summon persons and adjudge confiscations.
- 30. Rules of Criminal Procedure Code applied.
- 31. Seizures within Calcutta to be determined on by Justice of the Peace,
- 32. On confiscation, salt to vest in Her Majesty. 33. Penalty for vexatious seizures and arrests.
- 34. Punishment on second and subsequent convictions.
- 35, 36. (Repealed.) 37. Limitation as to charge.
 - 38. Bar of certiorari as to Justices' proceedings.
 - Quashing judgments.

 39. Board of Revenue may mitigate penalties.
 - 40. Disposal of proceeds of seizure and fines.
 - 41. Limitation of suits, etc. 42. (Repealed.)

SCHEDULE. (Renealed.)

BENGAL ACT 7 of 1864.

(THE SALT ACT, 1864.)[1]

(15th June, 1864.)

An Act to amend and consolidate the laws relating to the manufacture, possession, transport and sale of salt in the Provinces under the control of the Lieutenant-Governor of Bengal.[2]

Whereas it is expedient to amend and consolidate the laws relating Premule. to the manufacture, possession, transport and sale of salt in the Provinces under the control of the Lieutenant-Governor of Bengal; [2] It is enacted as follows:-

1. This Act may be cited as "the Salt Act, 1864."

Short title.

- 2. (Enactments repealed). Rep. by the Repealing Act, 1873 (12 of 1873).
- 3. The following words shall have the several meanings hereby Interpreassigned to them, unless where a contrary intention shall appear from tation. the context (that is to say),—

the word "salt" shall include every saline substance and preparation used or intended to be used with food;

[1] LEGISLATIVE PAPERS.-For Statement of Objects and Reasons, see Calcutta Gazette, 1864, p. 202.

LOCAL EXTENT .-- This Act was passed for the whole of the former Province of

LOGAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title and preamble.

This Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III of this Code.

It is in force in the Sonthal Parganas, see Vol. IV, Part IV of this Code; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

Commencement—The Act came into operation on the 1st July, 1865—see Notification, dated the 16th May, 1865 (in Calcutta Gazette of 24th idem, p. 945), issued under s. 42 of the Act.

of the Act.

Supersession.—The Act is to a great extent superseded by the Indian Salt Act, 1882 (12 of 1882), in General Acts 1873-86. Ed. 1928, p. 383, in the several areas in which the

latter Act is in force.

latter Act is in force.

CUSTOMS DUTY.—As to customs duty on imports of salt by sea, and imports by land from foreign territory, see the Indian Tariff Act, 1894 (8 of 1894), ss. 3, 5, and Sch. III, in General Acts, 1887-97, Ed. 1928, pp. 238, 239 and 269.

As to customs duty on salt imported coastwise, see the Sea Customs Act, 1878 (8 of 1878), s. 20(b), in General Acts, 1873-86, Ed. 1928, pp. 146, and the Indian Tariff Act, 1894, ss. 2 (4), 7, in ibid, 1887-97, Ed. 1928, pp. 238 and 239.

No drawback is allowed on re-exportation of salt—see the Sea Customs Act, 1878, s. 50 (d), ibid, 1873-86, Ed. 1928, p. 155.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalour.

Sambalpur.

(Secs. 4-5.)

" Manufacture."

the word "manufacture" shall include the preparation or collection of salt;

'Salt work." the words "salt work" shall mean any place used or intended to be used for the manufacture of salt;

" Board of Revenue."

the words "Board of Revenue" shall mean the Board of Revenue for the Lower Provinces of the Presidency of Fort William in Bengal;

the words "police officer" shall include all village-police-officers;

the word "secr" shall mean a weight of eighty tolas;

the word "maund" shall mean a weight of forty scers;

Salt in possession of servant or agent.

" Policeofficer."

" Seer."

" Maund."

when salt is in the possession of a person's servant or agent on his account, it is in that person's possession within the meaning of this Act;

Causing or procuring act to be done. punishable in same manner as doing act.

" Rawana."

where the doing of any act is made punishable by this Act, or by any of the rules to be made in pursuance thereof, with any penalty, the causing or procuring such act to be done shall be punishable in like manner;

the word "rawana" shall mean a written or printed permission duly issued under the provisions of this Act to possess or transport salt;

Unlicensed manufacture of salt prohibited.

4. Within the provinces under the control of the Lieutenant-Governor of Bengal | 3 | it shall not be lawful for any person, who is not duly licensed in the manner hereinafter provided, to manufacture salt.

Penalty for such manufacture.

5. Whoever, without a license duly obtained under this Act, shall manufacture, or attempt to manufacture, salt shall be punished with fine, which may extend to five hundred rupees, or with simple imprisonment for a term which may extend to six months, or with both.

[2] The clauses as to number and gender, which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

[3] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[1] The definition of "Magistrate," which was repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, is omitted. The Bengal Salt Act, 1873 (Ben. Act. 1 of 1873), s. 1, post, p. 151, declares that all powers which may, under the present Act, be exercised by a Magistrate, may be exercised by a Magistrate of the first or second class; and s. 2 of the Act of 1873 declares that all offences punishable under the present Act may be inquired into and tried by a Magistrate of the first or second class.

(Secs. 6-11.)

The use of each salt-work in such unlicensed manufacture shall be a separate offence within the meaning of this section; and each fire or fire-place, or place for collecting salt in any mode, used or intended to be used, in such manufacture, shall be deemed a separate salt-work.

The continuing, after conviction and sentence, of the offence mentioned in the introductory part of this section, shall be considered as amounting to the commission of such offence, and shall be punishable in the same way as such offence.

- 6. All materials and implements used or intended to be used in Confiscation manufacturing salt without a license, and all salt so manufactured, shall of salt and be confiscated.
- 7. The Board of Revenue shall grant licenses to manufacture salt Board of m such places in the said provinces and to such persons as they shall think fit:

Provided that no person shall obtain a license to manufacture salt unless he shall have complied with such terms and conditions for securing the payment of the duty hereinafter mentioned as may be required by the said Board.

8. Every proprietor, tenant, under-tenant and cultivator who owns Proprietor or holds land on which there shall be any salt-work not licensed under and others the provisions of this Act,

and every naib, gumashta, tahsildar or other agent employed by the licensed Government or the Court of Wards or by any private proprietor on such salt-works land.

shall, within ten days after the existence of any such salt-work shall have come to his knowledge, give written notice of the same to a Policeofficer.

If any person bound to give notice under this section shall wilfully omit or delay to give the same, he shall for every such offence be liable to a fine not exceeding five hundred rupees for each salt-work.

- 9. (Rate of duty on manufacture of salt). Rep. by the Indian Salt Act, 1882 (12 of 1882).
- 16. Every licensed manufacturer of salt shall, before he begins to Licensed manufacture, provide a proper and secure warehouse, to be approved by manufacturer to the Board of Revenue, for the purpose of depositing and securing therein provide the salt to be manufactured; and all salt manufactured by him shall in proper warethe first instance be deposited in such warehouse.

11. The Lieutenant-Governor of Bengal shall from time to time Lieutenantprescribe rules, which shall be notified in the Calcutta Gazette, for Governor may presregulating the manufacture, deposit and transport of salt, and for cribe rules securing the payment of the duty thereon; and shall from time to time and impose fix penalties for infringements of such rules:

Revenue to grant licenses on certain conditions.

to give notice to on their lands.

(Secs. 12-17.)

Proviso.

Provided that no rule shall be repugnant to any of the provisions of this Act, or to any law in force, and that no penalty shall exceed five hundred rupees.

Regulation of possession and salt. Rawanas by whom and how

granted.

- 12. Within such limits as the Lieutenant-Governor of Bengal shall define, by notification in the Calcutta Gazette, the possession and transport of transport of all salt shall be regulated in manner hereinafter provided.
 - 13. The Board of Revenue shall grant rawanas for all salt possessed or transported within the limits so fixed, in accordance with such rules as the Government shall from time to time make in this behalf, and on payment of such fee as may be fixed in such rules.

Rawana not to be granted without payment of duty. Limitation of possession or transport

of salt.

Proviso.

- 14. No rawana shall be granted unless the full amount of duty on the quantity of salt, to be specified in such rawana, shall have been paid.
- 15. It shall not be lawful to possess or transport more salt than five seers, unless the same shall be specified in a rawana granted under section 13 of this Act:

Provided that this section shall not apply to salt imported by sea and warehoused under Act 6 of 1863 (the Consolidated Customs Act),[1] or to salt deposited by a manufacturer in an approved warehouse under section 10 of this Act.

Penalties for possessing or transporting salt without a tawana.

16. Any salt, exceeding five seers in quantity, which may be found within such limits as aforesaid, not specified in a rawana, shall be held to be contraband, and as such shall be seized and confiscated.

The vessels, packages and covering in which such salt shall be found, and any animals or conveyances used in carrying it, shall also be seized and confiscated.

Any person possessing or transporting, or attempting to transport, such salt shall be liable to a fine not exceeding five rupees for every maund of salt so seized and confiscated.

All persons found in gangs or companies transporting, or attempting to transport, such salt, when the whole quantity exceeds ten secrs, shall be liable to the like penalty, and each one of the offenders shall be liable to the whole fine.

In the cases aforesaid the fine shall be at the rate of five rupees per maund, according to the quantity of salt seized, whether more or less than one maund.

Punishment for transporting salt

17. If any person shall possess, transport or attempt to transport, within the said limits, under a rawana a greater quantity of salt than is

^[1] Act 6 of 1863 has been repealed and re-enacted by the Sea Customs Act, 1878 (8 of 1878), and this reference should now be read as if made to the latter Act, see s. 2 thereof, in General Acts, 1873-86, Ed. 1928, p. 189.

(Secs. 18-23.)

specified in such rawana, the excess, as well as the quantity so specified, in excess of shall, if such excess be found on weighment to exceed two-and-a-half the quantity per centum on the quantity so specified, be held to be contraband, and the rawana as such shall be seized and confiscated.

Any person possessing or transporting, or attempting to transport, such salt shall be liable to a fine of five rupees for every maund of salt in excess of the quantity so specified.

18. Salt being conveyed by a route or to a place other than that Confiscation specified in such *rawana* shall be seized and confiscated.

that Confiscation of salt conveyed other than that Confiscation of salt conveyed that the confiscation of salt conveyed other than that Confiscation of salt conveyed that conveyed the conveyed that

Any person possessing or transporting, or attempting to transport, wise than as such salt shall be liable to the penalty prescribed in section 16 of this allowed. Act.

19. Salt which may have been transported beyond the said limits Salt transshall not again be brought within those limits except under a special ported beyond rawana granted for the purpose under the authority of the Board of limits not to be again because the said limits Salt transshall not again be be again.

Any salt brought within such limits without such special rawana within them shall be seized and confiscated; and the persons in whose possession it without a may be found shall be liable to the penalty prescribed in section 16 of rawana. this Act, for the possession of contraband salt.

It shall be competent to the said Board to withhold or grant such rawana.

- **20.** All persons possessed of salt specified in a rawana, who may Salt sold or sell, lose or otherwise dispose of any portion of such salt within the said limits to be limits, shall certify on the back of such rawana the quantity sold, lost certified or disposed of by them.
- 21. Whoever within the said limits sells, loses or disposes of salt, Penalty for and wilfully or negligently omits to certify such sale, loss or disposal certify sale thereof in the manner above described, shall be liable to a fine not or loss. exceeding five rupees for every maund so sold, lost or disposed of by him, and any salt in his possession not exceeding twice the quantity sold, lost or disposed of, may be seized by an officer in charge of the policestation as security for the payment of such fine.
- 22. If all the salt specified in a rawana be disposed of within the If whole said limits, such rawana shall be delivered up to the officer in charge of sold within the police-station within which the last parcel of the salt shall have limits or whole or been disposed of.

If any part of the salt specified in such rawana be carried beyond beyond, the said limits, such rawana shall in that case be delivered up to the rawana to be officer in charge of the last police-station which such salt may have to up. pass before being carried beyond the said limits.

23. Any police-officer may enter and inspect, at any time by day or Inspection night, any salt-work, or any warehouse or premises in which salt is of salt-works by police-officers.

(Secs. 24-28.)

24. Any police-officer may arrest any person carrying or in Arrest of persons carrying sait possession of contraband salt, and may seize the vessels, packages and liable to covering, and any animals or conveyances used in carrying such salt. confiscation.

Salt seized may be weighed by

25. For the purposes of the preceding section and of sections 16 and 17 of the Act, it shall be lawful for the officer in charge of the police-officer, police-station within which the salt shall be found to cause the same to be weighed.

Persons

26. Any person arrested on the ground that he has been guilty of an arrested to offence under this Act shall forthwith be taken before a Magistrate or taken before Justice of the Peace, who may, if he see reasonable cause, order such Magistrate and detained person to be detained in custody until the case shall have been disposed or admitted of in the manner hereinafter provided:

Provided that any person so detained shall be liberated on giving recognizance or security to appear at such time and place as shall be appointed for his appearance.

Magistrate may issue search warrant on application.

27. It shall be lawful for the Magistrate of a district, or division of a district, on application by a police-officer, stating his belief that salt is manufactured in any place within such district or division contrary to the provisions of this Act, or that salt not specified in a rawana is kept or concealed in any house, boat or place in such district or division, to issue a warrant to search for such salt.

Such warrant shall be executed in the same way, and shall have the 25 of 1861. same effect, as a search-warrant issued under the Code of Criminal Procedure.[1]

It shall be lawful for any Magistrate of the town of Calcutta, on the like application in reference to salt believed to be manufactured in Calcutta contrary to the provisions of this Act, or kept or concealed contrary to the provisions of this Act in any house, boat or place in Calcutta, to issue a warrant, which shall be executed in the same way and shall have the same effect as a search-warrant under Act 13 of 1856 (for regulating the police of the towns of Calcutta, Madras and Bombay). [2]

Rules regarding entry of a house by force.

28. Whenever any officer in charge of a police-station shall have reasonable cause to believe from information (which shall be taken down in writing) that salt is being manufactured in any place contrary

^[1] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. The latter Act was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). The reference in the text should be taken to be made to the Act of 1898—see s. 3 (1) thereof.

As to search-warrants, see ss. 96 to 99 of Act 5 of 1898.
[2] Act 13 of 1856, so far as it applied to the town of Calcutta, was repealed and re-enacted by the Calcutta Police Act, 1866 (Ben. Act 4 of 1866). The Bengal Salt Act, 1873 (Ben. Act 1 of 1873), s. 3 (post, p. 152), declares that all references made to Act 13 of 1856 in the Salt Act, 1864. "shall be taken to be made to the Calcutta Police Act, 1866" (Ben. Act 4 of 1866), printed in the Bengal Code (1913-15), Vol. II, p. 89.

(Secs. 29-31.)

to the provisions of this Act, or that salt not specified in a rawana is kept or concealed in any house, boat or place,

such officer may, between sunrise and sunset, but always in the presence of another police-officer, enter into any such house, boat or place, and in case of resistance may break open any door and remove any obstacle to such entry:

and may seize and carry away all such salt so found, and all materials and implements used, or intended to be used, in the manufacture,

and may arrest all persons concerned in the manufacture or in the keeping and concealing of such salt:

Provided that, whenever it shall be necessary to enter any house in such manner, the rules for entering a house in execution of a searchwarrant, prescribed in Chapter VIII of the Code of Criminal Procedure, $\lceil 1 \rceil$ and in the said Act 13 of 1856, $\lceil 2 \rceil$ shall be observed by the officer effecting such entry.

29. When any salt or other property shall be seized as contraband, Magistrate any Magistrate within the district or division of a district wherein the mon persons same may be seized may, upon the information of any police-officer, and adjudge summon the person in possession of such salt or other property, or to confiscations. whom the same may belong, to appear before him; and upon such appearance, or in default thereof may examine into the cause of the seizure thereof, and may adjudge the same to be confiscated.

30. The rules contained in the Code of Criminal Procedure [1] for Rules of the trial of cases before a Magistrate and for appeal against orders passed Procedure by a Magistrate shall be applicable to adjudications under the last Code preceding section.

31. When any salt or other property shall be seized under this Act Seizures as liable to confiscation within the local limits of the town of Calcutta, Calcutta to such seizure shall, upon information exhibited by any police-officer, be be determined on by heard and determined in a summary way by a Justice of the Peace for Justice of the town of Calcutta:

the Peace.

^[1] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. It was declared in s. 2 of Act 10 of 1872 that this reference to Chapter VIII of Act 25 of 1861 should be deemed to be made to Chapter XXVII and ss. 415 to 420 (both inclusive) of Act 10 of 1872. Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). Section 3 (1) of the Code of 1898 carries on references to former Codes, and the reference in the text should therefore now be taken to be made to the provisions of Act 5 of 1898.

^[2]Act 13 of 1856, so far as it applied to the town of Calcutta, was repealed and re-enacted by the Calcutta Police Act, 1866 (Ben. Act 4 of 1866). The Bengal Salt Act, 1873 (Ben. Act 1 of 1873), s. 3 (post, p. 152), declares that all references made to Act 13 of 1856 in the Salt Act, 1864, "shall be taken to be made to the Calcutta Police Act, 1866" (Ben. Act 4 of 1866), printed in the Bengal Code (1913-15), Vol. II, p. 89.

(Secs. 32-40.)

and such Justice shall cause the person in possession of such salt or other property, or to whom the same may belong, to be summoned to appear before him; and upon such appearance, or in default thereof, shall inquire into the cause of such seizure, and may adjudge the same to be confiscated.

On confisca-Majesty.

32. When the confiscation of any salt or other property shall be tion, salt to adjudged under the three last preceding sections, the same shall thereupon belong to, and vest in, Her Majesty, and a warrant shall be issued by the Court to a police-officer directing him to hold the salt or other property confiscated at the disposal of the Board of Revenue.

Penalties for vexatious arrests.

33. Any police-officer who shall vexatiously and unnecessarily seize the goods or chattels of any person on the pretence of seizing or searchseizures and ing for contraband salt, or who shall vexatiously and unnecessarily arrest any person, or commit any other excess beyond what is required for the execution of his duty, shall be liable to a fine not exceeding five hundred rupees or to simple imprisonment for a term not exceeding six months.

Punishment on second and subsequent convictions.

34. Whenever any person shall be convicted of an offence against this Act, after having been previously convicted of a like offence,

he shall be liable, in addition to the penalty attached to such offence, to simple imprisonment for a period not exceeding six months,

and a like punishment of imprisonment not exceeding six months shall be inflicted, in addition to the punishment which may be inflicted for a first offence, upon every subsequent conviction after the second.

35, 36. (Enforcement of penalties.—Period of imprisonment in default of payment of fine). Rep. by the Amending Act, 1903 (1 of 1903).

Limitation

37. No charge of an offence under this Act shall be instituted except as to charge, within six months after the commission of such offence.

38. No writ of certiorari shall be issued at the suit of any party out Bar of certiorari as of the High Court of Judicature, to supersede, stay, remove or in any to Justices' proceedings. wise affect any information or judicial proceeding before any Justice of the Peace in pursuance of this Act;

Quashing judgments.

and no judgment thereupon shall be quashed, except for error of law apparent on the face of the judgment.

Board of Revenue may mitigate penalties.

39. When any confiscation or penalty shall be adjudged under this Act, the Board of Revenue, within three months after final judgment, may call for the proceedings of the case, and if they shall see cause may direct that the seizure or any part thereof be restored, and may remit the penalty or part thereof and direct that the offender be discharged.

Disposal of the proceeds of seizure and fines.

40. All fines paid or levied under * * *[1] this Act shall be at the disposal of the Board of Revenue, and the said Board may

^[1] The words and figures "section 35 of," which were repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, are omitted.

(Secs. 41-42. Schedule.)

appropriate the same or any portion thereof, and the proceeds of any seizure or any portion of such proceeds, to form a fund for rewarding the police of such grades as may be determined by the said Board, and for rewarding informers, and for compensating persons subjected to annoyance or injury by any proceeding under this Act.

41. No suit, action or other proceeding shall be commenced against Limitation any person for anything done in pursuance of this Act, without giving of suits etc. to such person a month's previous notice in writing of the intended suit, action or other proceeding, and of the cause thereof; nor after the expiration of three months from the accrual of the cause of suit, action or other proceeding.

42. (Power to notify commencement of Act.) Rep. by the Repealing Act, 1873 (12 of 1873).

SCHEDULE.

(Enactments repealed.) Rep. by the Repealing Act, 1873 (12 of 1873).

BENGAL ACT 4 OF 1865.

(THE BENGAL PREVENTION OF INOCULATION ACT, 1865.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Penalty for inoculating or otherwise producing small-pox.
- 2. Penalty for entering into any place subject to Act, without a proper certificate, before forty days from date of inoculation.
- 3. Act where to take effect.
- 4. Mode of procedure.

BENGAL ACT 4 of 1865.

(THE BENGAL PREVENTION OF INOCULATION ACT, 1865.)[1]

(12th April, 1865.)

An Act for the prohibition of the practice of inoculation in the town and suburbs of Calcutta and in towns to which Act 3 of 1864,[2] passed by the Lieutenant-Governor of Bengal in Council, has been or shall hereafter be extended.

Whereas it is found that small-pox is spread by inoculators who Preamble. infect persons living in towns without adopting any precaution against contagion;

And whereas proper and sufficient arrangements have been made in the town of Calcutta and in its suburbs, and in certain other towns in the province of Bengal, [3] for the vaccination or inoculation with the cow-pox of the inhabitants thereof respectively; and it is desirable to prohibit by law the practice of inoculation with the small-pox in such towns and places;

It is enacted as follows:—

1. Any person who shall hereafter produce, or attempt to produce, Penalty for in any person, by inoculation with variolous matter, or by wilful exposure inoculating to variolous matter, or to any matter, article or thing impregnated with or otherwise

producing

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), small-pox. Sch. 1—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,

LOCAL EXTENT.—This Act extends to the town and suburbs of Calcutta and to Howrah, and may (see s. 3, post, p. 40) be extended to-

(a) any other municipality,
(b) any cantonment, or
(c) any place in which there are proper and sufficient arrangements for inoculation with cow-pox.

(c) any place in which there are proper and sufficient arrangements for inoculation with cow-pox.

The Act is in force in the following de-regulationised tracts, namely:—the Angul Sub-division,—see Vol. IV, Part IV of this Code, and

the Angul Sub-division,—see Vol. IV, Part IV of this Code, and the Sonthal Parganas,—see ibid; but its application is barred in the Khondmals Sub-division of the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

Further Enarment.—For a further enactment relating to small-pox, see the Bengal Vaccination Act, 1880 (Ben. Act 5 of 1880), post, p. 305.

[2] Ben. Act 3 of 1864 was repealed by Ben. Act 5 of 1876. The latter Act was repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), which again has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922). This reference to Ben. Act 3 of 1864 must now be taken to be made to the Bihar and Orissa Municipal Act, 1922—printed in Vol. III of this

[3] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 2-4.)

variolous matter, or who shall wilfully, by any other means whatsoever, produce the disease of small-pox in any person, shall be liable, on conviction before a Magistrate, to imprisonment of either description for a period not exceeding three months, or to a fine not exceeding two hundred rupees or to both.

Penalty for entering place, subject to Act, without certificate, before forty days from date of inoculation.

2. If any person, having been inoculated with the small-pox in a place to which the provisions of this Act shall not at the time be applicable, shall afterwards enter the town of Calcutta, or any other town or place to which such provisions shall then be applicable, before the lapse of forty days from the date of such inoculation, or without a certificate from a qualified medical officer[1] stating that such person is no longer likely to cause contagion, such person shall be liable, on conviction before a Magistrate, to imprisonment of either description for a period not exceeding three months, or to a fine not exceeding two hundred rupees, or to both.

Act where to take effect.

3. This Act shall take effect in the town of Calcutta and in the station of Howrah and suburbs of Calcutta, as the same are defined in the Schedule appended to Act 21 of 1857[2] (to make better provision for the order and good government of the suburbs of Calcutta and of the station of Howrah), from the date of the passing of this Act;

and it shall be lawful for the Lieutenant-Governor of Bengal, at any time after such date, by notification[3] published in the Calcutta Gazette, to extend this Act to any town or place to which Act 3 of 1864, [4] passed by the Lieutenant-Governor of Bengal in Council (the District Municipal Improvement Act) shall then apply, or in which there shall then be any Military Cantonment, or in which it shall appear to the Lieutenant-Governor of Bengal that at the time of such notification there exist proper and sufficient arrangements for the inoculation of the inhabitants thereof with the cow-pox.

Made of procedure.

4. The provisions of the Code of Criminal Procedure[5] relative to 25 of 1861. the meaning thereby assigned to the word "Magistrate," and to cases

^[1] As to the meaning of the expression "qualified medical officer" see the Bihar

^[1] As to the meaning of the expression "qualified medical officer" see the Bihar and Orissa Medical Act, 1916 (B. and O. Act 2 of 1916), s. 30, in Vol. III of this Code.
[2] The Howrah Offences Act, 1857, printed in the Bengal Code.
[8] For a list of notifications issued under s. 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.
[4] Bengal Act 3 of 1864 was repealed by Ben. Act 5 of 1876. The latter Act was repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), which again has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922). This reference to Bengal Act 3 of 1864 must now be taken to be made to the Bihar and Orissa Municipal Act, 1922—printed in Vol. III of this Code.

^[5] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. The latter Act was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and the references in the text should now be read as referring to the latter Act-see s. 3 (1) thereof.

(Sec. 4.)

triable under Chapter XV of the said Code[1] * *[2] shall apply to the case of any offence committed against this Act

Whenever the convicting Magistrate shall sentence the offender to fine, it shall be lawful for such Magistrate to award any portion, not exceeding one-half, of such fine to the person on whose information such offender has been convicted.

^[1] The Code of Criminal Procedure here referred to (Act 25 of 1861) was repealed and re-enacted by Act 10 of 1872. The latter Act was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and the references in the text should now be read as referring to the latter Act-see s. 3 (1) thereof.

^[2] The words "and to the recovery of fines" were repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, and are omitted.

[3] The portion, repealed by *ibid*, is omitted.

[The Bengal Rent Recovery (Under-Tenures) Act, 1865.1

CONTENTS.

PREAMBLE.

SECTION.

- 1. Meaning of the word "Collector".
- 2. (Repealed.)
- 3. Sale by whom to be conducted.
- 4. Notice of sale where to be hung up.
- 5. Notice of sale what to contain.
- 6. How the sale may be stopped.
- 7. Sale to be to the highest bidder.
- 8. Purchaser to deposit 25 per cent.
- 9. Deposit to be forfeited if balance of purchase-money be not paid up in time.
- 10. Provisions as to sales to apply to all re-sales.
- 11. Certificate and possession to be given to purchaser on payment by him in full.
- 12. Proceeds of sale how to be dealt with.
- 13. Appeal.
- 14. Power of revision.
- Purchaser to recover purchase-money in such manner as appellate or revising authority may direct, if sale be set aside.
- Purchaser to acquire the under-tenure, with certain exceptions, free of incumbrances.
- 17. Zamindar how to proceed if purchaser do not register.
- 18. (Repealed.)

SCHEDULE.

BENGAL ACT 8 of 1865.

[The Bengal Rent Recovery (Under-Tenures) Act, 1865.][1]

(7th June, 1865.)

An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.

Whereas doubts have arisen, in consequence of the repeal of section Preamble. 16 of Regulation 7 of $1832,\lceil 2\rceil$ as to the authority by whom patni taluks and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation 8 of 1819[3] are to be sold for arrears of rent due to the proprietor on account thereof;

And whereas it is expedient to amend the law for the sale of undertenures in satisfaction of decrees for the recovery of such arrears;

It is enacted as follows:—

1. The word "Collector" as used in this Act includes all officers "Collector" defined. exercising the full powers of a Collector of a district.

*****[4]

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,

application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3

of 1913), s. 3 (2), in Vol. I of this Code.

The whole of this Act, except s. 3, has been repealed for the division of Orissa, see the Orissa Tenancy Act, 1913 (B. and O. Act 2 of 1913), s. 2, Sch. I, Part III in Vol. III of this Code.

Annotated reprint.—This Act is reprinted with notes in the Bihar and Orissa

Sale Law Manual, 1923, p. 144.

[2] Ben. Reg. 7 of 1832 (Munsifs and Sadr Amins and Principal Sadr Amins modifying Regulation, 1832) was repealed by the Bengal Civil Courts Act, 1871 (6 of 1871), which in its turn was repealed and re-enacted by the Bengal, Agra and Assam Civil Courts Act, 1887 (12 of 1887), printed in Vol. I of this Code.

[8] The Bengal Patni Taluks Regulation, 1819. It is printed in Vol. I of this

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I.—see Vol. I of this Code.

LEGISLATIVE FARELS.—201 Executive Color of Scheduled Districts Act, 1874 (1865, p. 287.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III of this Code.

It is in force in the Sonthal Parganas, see Vol. IV, Part IV of this Code; but its control is barred in the District of Angul by the Angul Laws Regulation, 1913 (3)

^[4] The number clause, which was repealed by the Amending Act, 1903 (1 of 1903), is omitted.

(Secs. 2-7.)

2. (Laws repealed.) Rep. by the Repealing Act, 1873 (12 of 1873).

3. The sale for the recovery of arreasy of rept. of matrix talkles and

Sale by whom conducted. 3. The sale for the recovery of arrears of rent of patni taluks and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation 8 of 1819[1] shall be conducted by the Collector of land-revenue in whose jurisdiction, as defined by Act 6 of 1853,[2] the lands lie; and all acts preparatory to, or connected with, the sale of such under-tenures as aforesaid which, by Regulations 8 of 1819[1] and 1 of 1820,[3] the Judge is required to perform, shall be performed by the said Collector.

Publication of notice of sale.

4. Whenever a decree for an arrear of rent, due in respect of an under-tenure saleable under the provisions of section 105 of Act 10 of 1859, [4] shall have been obtained, and an application for the sale of the said under-tenure under the same section shall have been made and allowed, the Collector, in whose Court the decree is in course of execution, shall thereupon cause to be hung up in his own Court and in that of the Collector and the Judge of the district within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village in or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date not less than 20 days from the hanging up of the said notice in the Court in which the decree is in course of execution.

Contents of notice of sale.

5. The said notice shall specify, in the words used in the plaint in the suit in which the decree was made, the name of the village, estate and pargana, or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.

How sale may be stopped.

6. If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder of the undertenure, or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation 8 of 1819,[1] for the recovery of sums paid by other than the defaulting-holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.

Sale to highest bidder. 7. The under-tenure shall be sold to the highest bidder in open Court.

The Bengal Patni Taluks Regulation, 1819. It is printed in Vol. I of this Code.
 The Rent Recovery Act, 1853. It is printed in Vol. I of this Code.

^[3] The Bengal Patni Taluks Regulation, 1820. It is printed in Vol. I of this Code.

^[4] The Bengal Rent Act, 1859. It is printed in Vol. I of this Bengal Code, Fourth Edition.

(Secs. 8-13.)

8. The party who shall be declared to be the purchaser shall be re- Deposit by quired to deposit immediately, in cash or Government currency notes, purchaser. twenty-five per cent. of the amount of his bid; and, in default of such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office-day.

9. The full amount of the purchase-money shall be made good by the Deposit purchaser before sunset of the eighth day from that on which the sale forfeited if of the under-tenure took place, reckoning that day as one of the eight; purchaseor, if the eighth day be a Sunday or other close holiday, then on the money not first office-day after the eighth day: and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said under-tenure may be subsequently sold.

If the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.

10. The provisions of all the sections of this Act with regard to sales Provisions shall also be applicable to all re-sales under this Act which may be as to sales to apply to rendered necessary by the default of any purchaser.

11. When the purchase-money shall have been paid in full, the Certificate officer holding the sale shall give the purchaser a certificate in the form and possession to be prescribed in the Schedule annexed to this Act; and shall further, on the given to purchaser making application and depositing the requisite costs, depute purchaser on payment in an officer or amin to put him in possession of the under-tenure in the full. customary manner, and to publish the fact of the purchase to the cultivators of the lands comprised therein.

12. From the proceeds of the sale of the under-tenure the officer Proceeds of holding such sale shall repay to the judgment-creditor the necessary sale how dealt with. expenses incurred by him in procuring it; and, after satisfying the decree in execution of which the sale was made, shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure.

13. An appeal shall lie to the Collector from any proceedings of a Appeal. Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector, under this Act, if made within thirty days from the date of the sale: but no proceedings under this Act shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the appellate authority, has caused injury to the interests of one of the parties to the suit in which the decree was passed.

(Secs. 14-17.)

Power of revision.

14. No appeal as of right shall lie from any order passed in appeal under this Act; but a Commissioner, in any case in which an appeal has been heard by a Collector, and the Board of Revenue, in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.

Recovery by purchaser of purchase money if sale set side.

15. If any sale of an under-tenure shall, under either of the two preceding sections, be set aside, the purchaser shall be entitled to receive back the purchase-money with or without interest, and in such manner as the appellate or revising authority may in each instance direct.

Any order for the recovery of the purchase-money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.

Purchaser to acquire the undertenure with certain exceptions, free of incumbrances.

16. The purchaser of an under-tenure sold under this Act shall acquire it free of all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created or by the subsequent written authority of the person who created it, his representatives or assignees:

Provided that nothing herein contained shall be held to entitle the purchaser to eject khudkast raiyais or resident and hereditary cultivators, nor to cancel bona fide engagements made with such class of raiyats or cultivators aforesaid by the late incumbent of the undertenure or his representatives, except it be proved, in a regular suit to be brought by such purchaser for the adjustment of his rent, that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.

Zamindar how to proceed if purchaser do not register. 17. The purchaser of an under-tenure sold under this Act shall apply to the zamindar or other landholder, within fifteen days from the day of sale, to have his name registered in the zamindar or other landholder's books as the purchaser, and shall execute a kabulyat on the same terms and conditions on which the under-tenure was held by the defaulter; and, if such application be not made within fifteen days, it shall be lawful for the zamindar or other landholder to sue the said purchaser under the provisions of clause 1 of section 23 of Act 10 of 1859.[1]

^[1] The Bengal Rent Act, 1859. It is printed in Vol. 1 of the Bengal Code, Fourth Edition.

(Sec. 18. Schedule).

18. (Indemnity.) Rep. by the Repealing Act, 1873 (12 of 1873).

SCHEDULE.

(Referred to in section 11.)

I certify that A B has purchased, under Act 8 of 1865, the undertenure (as specified in the notice of sale), and that his purchase took effect on the day of (being the day after that fixed for the last day of payment).

(Signed) C. D.

Collector.

BENGAL ACT 3 OF 1866.

[THE BENGAL LEGISLATIVE COUNCIL (WITNESSES) ACT, 1866.]

CONTENTS.

PREAMBLE.

SECTION.

- Lieutenant-Governor may, by summons, require any person to appear before the Council.
- 2. Administration of an oath or affirmation.
- 3. Powers against persons failing to appear, etc.
- 4. Expenses of witnesses.
- 5. Provisions of sections 21 and 32 of Act 2 of 1855, extended.
- 6. Interpretation.

BENGAL ACT 3 OF 1866.

[The Bengal Legislative Council (Witnesses) Act, 1866.][1]

(28th March, 1866.)

An Act to provide for the attendance and examination of witnesses before the Council of the Lieutenant-Governor of Bengal for making Laws and Regulations.

Whereas it is expedient to make provision for the attendance of Preamble. witnesses before the Council of the Lieutenant-Governor of Bengal for making Laws and Regulations and for the examination of such witnesses; It is enacted as follows:--

1. It shall be lawful for the Lieutenant-Governor of Bengal by a Lieutenantsummons under the hand of the Secretary or Assistant Secretary to Governor the Government of Bengal in the Legislative Department for the time may, by being,

summons, require any person to

to require the attendance before the Council of the Lieutenant-Governor of Bengal for making Laws and Regulations, at a time before his and place to be ment oned in such summons, of any person, residing Council. within any of the provinces or places subject to the Government of the Lieutenant-Governor of Bengal, whose evidence shall, in the judgment of such Council, be material with reference to any project of Law, Bill or Act then under consideration by such Council;

and by such summons to require the person so summoned to produce before such Council all such books, deeds and writings as to the said Council shall appear necessary for obtaining information as to the matter so under consideration:

and every person so summoned shall, according to the exigency of the summons, attend before the said Council, and produce such books, deeds and writings as shall be in his power, custody or control.

LEGISLATIVE PAPERS.-For Statement of Objects and Reasons, see Calcutta Gazette, 1866, p. 252.

LOCAL EXTENT .- This Act was passed for the whole of the former Province of

The Act has been declared, by notification under the Scheduled Districts Act, 1874 110 Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh. Ranchi, Palamau and Manbhum and the Pargana Dhalbhum and the Kolban in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Part III of this Code.

It is in force in the Sonthal Parganas, see Vol. IV, Part IV of this Code; but

its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I-see Vol. I of this Code.

(Secs. 2-4.)

Administration of an oath or affirmation. 2. It shall be lawful for the said Secretary or Assistant Secretary to the Government of Bengal in the Legislative Department for the time being, or any other officer appointed in that behalf by the Lieutenant-Governor to administer an oath or affirmation, [1] in such form as to the said Council shall seem fit, to any person appearing in obedience to such summons as aforesaid.

But nothing herein contained shall prevent such person from giving evidence without oath or affirmation, if the said Council shall think it expedient that the evidence should be so given.

Powers against persons failing to appear, etc. **3.** If any person, upon whom any such summons shall be served by the delivery thereof to him, or leaving thereof at his usual or last known place of abode,

shall, without reasonable cause (to be allowed by the said Lieutenant-Governor of Bengal), fail to appear before the said Council at the time and place mentioned in the summons, or

shall refuse to make oath or affirmation as required, or

shall not make answer to such questions as shall be put to him touching the matter under consideration as aforesaid, or

shall refuse or fail, without reasonable cause (to be allowed by the said Lieutenant-Governor of Bengal), to produce to the said Council any book, deed or writing in his possession, power or control as by the said Council he shall be required to produce (whether mentioned in the summons or not),

the Lieutenant-Governor of Bengal shall, on the report of the said Council that such failure or refusal has taken place, have the power, by warrant under his hand, to direct that such person be apprehended and committed to close custody in a place and for a time specified in the warrant, unless he shall in the meantime comply, to the satisfaction of the said Council, with such requisitions as have been made on him touching his examination.

The warrant may be directed to any officer appointed in that behalf by the Lieutenant-Governor.

Expenses of witnesses.

4. Whenever a summons is issued for the attendance of a witness under this Act, the Lieutenant-Governor of Bengal may, if he thinks fit, order such witness to receive from the Collector or Commissioner of the district or division in which the witness resides such expenses as he would have been entitled to receive if summoned as a witness before the principal Court of original jurisdiction within the limits of which he shall be residing.

As to oaths and affirmations, see the Indian Oaths Act, 1873 (10 of 1873), in General Acts, 1873-86, Ed. 1928, p. 7.

(Secs. 5-6.)

5. The provisions of sections 21 and 32 of Act 2 of 1855[1] (for the Provisions of sections further improvement of the Law of Evidence) shall extend to witnesses 21 and 32 examined before the said Council of the Lieutenant-Governor of of Act 2 of 1855 Bengal.

extended.

6. Throughout this Act, unless the contrary appears from the con- Interpretatext,---

the word "Council" shall include any committee of the whole "Council." Council, and any Select Committee of the Council of the Lieutenant-Governor of Bengal for making Laws and Regulations.

Provided that no such answer, which a witness shall be compelled to give, shall, except for the purpose of punishing such person for wilfully giving false evidence upon such examination, subject him to any arrest or prosecution, or be used as evidence against such witness in any criminal proceeding."

Act 2 of 1855 has been repealed by the Indian Evidence Act, 1872 (1 of 1872,printed in General Acts, 1834-72, Ed. 1928, p. 365).

^[1] These sections are as follows:—
"21. A witness whether a party or not, shall not be bound to produce any document relating to affairs of State, the production of which would be contrary to good policy, nor any document held by him for any other person who would not be bound to produce it if in his own posssession."

[&]quot;32. A witness shall not be excused from answering any question relevant to the matter in issue in any suit or in any civil or criminal proceeding, upon the ground that the answer to such question will criminate, or may tend, directly or indirectly, to criminate, such witness, or that it will expose, or tend, directly or indirectly, to expose, such witness to a penalty or forfeiture of any kind:

^[2] Words as to number and gender, which were repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, are omitted.

BENGAL ACT 7 OF 1866.

(THE BENGAL EMBANKMENT ACT, 1866.)

CONTENTS.

PREAMBLE.

SECTION.

- Lands for embankments may be acquired under powers for acquiring land for public purposes.
- 2. Charging cost of land acquired, where lands of different owners benefited.
- 3. Mode of inquiry as to proportion chargeable to each estate.
- 4. Power to make award stating names of owners of lands benefited and proportion of cost payable.

No appeal from award, but one owner may recover from another not assessed or under-assessed.

- 5. Expense included in cost of acquiring land.
- 6. Expenses of sluice apportioned where lands of different owners benefited.
- 7. Disposal of lands no longer required for embankments.
- 8. Collector may delegate powers to Deputy Collector.
- 9. Act does not apply where obligation to provide land exists.
- 10. Interpretation.

BENGAL ACT 7 of 1866.

(THE BENGAL EMBANKMENT ACT, 1866.)[1]

(9th May, 1866.)

An Act to make better provision for the acquisition of land for embankments, and other matters relating thereto.

Whereas it is expedient to make better provision for the acquisition Preamble. of land required for embankments, and for charging the expense thereof upon the owners of lands benefited thereby: Be it enacted:-

1. When it shall be necessary for any Collector to acquire land for Lands for the purpose of constructing any public embankment, or of extending or embankaltering any embankment, the superintendence or charge whereof is be acquired vested in an officer of Government, the provisions of Act 6 of 1857,[2] under passed by the Governor General of India in Council, entitled "an Act acquiring for the acquisition of land for public purposes," or of any other Act land for for the time being in force relating to the acquisition of land for public purposes. purposes, shall extend and apply to the acquisition of such land for the purpose aforesaid, so far as the same shall be applicable;

and such Collector shall and may take and acquire such land, and assess compensation for the same, and do all other acts necessary for the acquisition thereof, by and under the powers and provisions of such Act or Acts so far as the same is or are applicable in that behalf; but no such declarations or orders by or on behalf of Government as are mentioned in sections 2 and 3 of the said Act 6 of 1857,[2] shall be necessary or required.

Any person to whom compensation has been awarded in respect of lands taken shall be entitled to receive the same together with interest

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1866, p. 203.

The Act has been repealed everywhere except in Orissa and the Sundarbans, by the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), parts of which are printed. post, p. 161.

The application of the Act is barred in-

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

The only portion of the present Province of Bihar and Orissa in which the Act is in force is the Division of Orissa.

^[2] Act 6 of 1857 was repealed by Act 10 of 1870, which again has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894). This reference should now be construed to be made to the latter Act—see s. 2 (3) thereof, in General Acts, 1887-97, Ed. 1928, p. 213.

(Secs. 2-3.)

after the rate of six per centum per annum from the time when the land was taken:

Provided that, notwithstanding anything contained in section 7, clause 1, of Act 32 of 1855[1] passed by the Governor General of India in Council, entitled "An Act relating to embankments," it shall not be obligatory upon the Collector to pay to any person, nor shall any person have a right to a civil suit for the recovery of any money in respect of compensation for lands taken, where the same is payable as hereinafter provided by the persons whose lands are benefited, until and unless the Collector shall have received the same from such person.

Charging cost of land acquired, of different owners benefited.

2. In cases where lands, the property of different owners, will, in the opinion of the Collector derive benefit from the construction, alterawhere lands tion or extension of any public embankment, and it is necessary to acquire land for the purpose of such construction, alteration or extension, it shall be lawful for such Collector to charge the cost of such land and the expense attending its acquisition upon the persons so deriving such benefit, in such proportions as in his opinion shall be equivalent to the benefit derived by their lands respectively.

Before assessing such contribution, the Collector shall cause a notice to be served on each of such persons, in which it shall be stated what land is being taken, and the purpose for which it is required, and that the lands of such person will derive benefit from the execution of the works, and giving him notice that an inquiry will be held, at a day and place to be named, for the purpose of apportioning amongst the persons whose lands will be benefited by the intended works the cost of the land and the expense of acquiring it.

In case such person does not reside within the district in which his lands are situate, the notice may be served upon his agent, or, if he has no agent therein, it will be sufficient to affix the notice upon some conspicuous part of his estate.

Mode of inquiry as to proportion chargeable to each estate.

3. On the day fixed in the notice, which shall not be less than one month later than the date of service of such notice, the Collector shall proceed to make the necessary inquiry for the determination of the proportion in which the estates affected by the construction, extension or alteration of the embankment will be benefited thereby.

In making this inquiry he shall receive such evidence as may be tendered by or on behalf of the owners of estates which may appear likely to be benefited by the construction, extension or alteration of the embankment as aforesaid, and by and on behalf of any other persons who may claim to be interested in the said inquiry, and be may make or cause to be made such local investigation, and call for such documents. and examine such witnesses, as he may think necessary; and all the

^[1] The Bengal Embankment Act, 1855. It is printed in Vol. I of this Code.

(Secs. 4-6.)

provisions of the law[1], for the time being in force in regard to the examination of witnesses and production of documents in judicial proceedings, shall be applicable to inquiries conducted by the Collector under this Act.

4. The Collector shall and may after such inquiry make an award, in Power to which he shall find and state the names of the persons whose lands will make award be or are benefited by the construction, alteration or extension of such stating names of embankment, and the proportion of the cost of the land and the expense owners of of its acquisition (including therein the cost of the said inquiry) which benefited they ought, respectively, to bear.

and proportion of cost payable.

No appeal shall lie from the award of the Collector.

But it shall be competent to the owner of any land assessed to a from award, larger amount than his fair proportion to recover such excess in the owner may Civil Court from the owner of any land or estate benefited thereby upon recover from whom no assessment has been made or a smaller amount has been assess- another made or a smaller amount has been assessed or ed than ought to have been awarded against him:

No appeal another not underassessed.

Provided that in such suit no more shall be recovered from any person than the amount to which he ought to have been assessed where he has not been required to contribute, or the amount by which the sum he was required to pay was less than his fair proportion where he has been required to contribute.

5. There shall be included in the expense of acquiring the land so Expense to be distributed amongst the persons benefited not only the compensation included in awarded to the owner of the land taken, including interest at the rate acquiring of six per centum per annum from the time when the land was taken, land. but also the cost of surveys and plans, of notices, of the said inquiry and award, and all other costs, charges and expenses incident to obtaining possession of such land.

The amount so awarded shall and may be recovered from the person so required to pay the same in the same way and by the same means[2] as arrears of Government revenue.

6. When application has been made to the Collector under section 8 Expenses of the said Act 32 of 1855[3] for the construction of a sluice in any public of sluice apportioned embankment, and in the opinion of the Collector lands, the property of where lands other persons as well as of the person making the application, will be of different owners. benefited by the construction of the sluice, the expense of such construction of the sluice, the expense of such construction. tion may be assessed upon and recovered from such persons in such shares

^[1] See now Act 5 of 1908 (the Code of Civil Procedure, 1908), Sch. I, Orders XIII, XVI and XVIII.

^[2] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

^[8] The Bengal Embankment Act, 1855. It is printed in Vol. I of this Code.

(Secs. 7-8.)

or proportions as shall, in the opinion of the Collector, be equivalent to the benefit derived by their lands, respectively:

Provided, nevertheless, that notice in writing shall be served on all such persons, stating that it is proposed to make such sluice, the probable expense thereof, and that an inquiry will be held at a place and hour specified, for the purpose of apportioning the expense of such construction among the persons to be benefited thereby, and that such person is supposed to be likely to be benefited thereby.

And such notice may be served, and such inquiry shall be held, and such award shall be made, subject to the same rules, powers and provisos in all respects as is hereinbefore provided in the case of the apportionment of the cost of land required for embankments.

And the said award shall be final: but a civil suit may be brought to recover any excess with which any such person may be charged from persons who ought to have been charged but have not been charged with any portion of the expense or against whom less has been awarded than their fair proportion, as hereinbefore provided with respect to the apportionment of the cost of land.

Disposal of lands no longer required for embankments. 7. Whenever, in consequence of the construction or alteration of any public embankment, the maintenance of any other public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient by the officer in charge of the embankments, it shall be lawful for the Collector to dispose of the site of the embankment, or of the land so abandoned, by public sale; and all the provisions of the law for the time being in force in regard to sales of land in default of payment of the Government revenue shall be applicable, so far as the same may be reasonably applied, to sales under the provisions of this section.

The proceeds of such sales shall, after the payment of all expenses incurred on account of the same, be applied to the payment of the cost of the new land taken up for embankment purposes, and in such case the residue only of the cost of such new land shall be apportioned among the owners of lands benefited as hereinbefore provided:

Provided that it shall not be competent to the Collector to sell in the manner aforesaid any land which shall not have been taken up for embankment-purposes under the provisions of this Act.

Collector may delegate powers to Deputy Collector.

8. A Collector may delegate any of his powers under this Act to a Deputy Collector; but from any order passed by a Deputy Collector to whom powers have been so delegated an appeal shall lie to the Collector, if presented within fifteen days of the date of the order.

(Secs. 9-10.)

9. Nothing in this Act shall be held to exempt any person from the Act does obligation of giving land gratuitously, or of paying for land taken up where for the purpose of public embankments, where such obligation exists by obligation any law or custom.

land exists

10. The following words and expressions shall have the several Interpretameanings hereby assigned to them, unless where a contrary intention tion. appears from the context.

the word "Collector" shall include any officer exercising, by "Collector." authority of Government, the duties of a Collector of land-revenue, by whatever name his office may be designated:

the word "owner" shall include zamindars, holders of patni tenures "Owner." or of any rent-free tenure, dependent talukdars, Sundarban grantees and farmers or holders of tenures paying revenue direct to Government.

^[1] The provision as to number and gender, which was repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, is omitted

BENGAL ACT 2 OF 1867.

(THE BENGAL PUBLIC GAMBLING ACT, 1867.)

CONTENTS.

SECTION.

- 1. Interpretation.
- 2. Power to extend Act.
- 3. Penalty for owning or keeping, or having charge of, common gaming-house.
- 4. Penalty for being found in common gaming-house.
- 5. Power to enter and authorize police to enter and search.
- 6. Finding cards, etc., in suspected houses to be evidence that they are common gaming-houses.
- 7. Penalty for giving false name or address.
- 8. Destruction of instruments of gaming.
- 9. Proof of playing for stakes unnecessary.
- 10. Act not to apply to certain games.
- 11. Gaming and setting birds and animals to fight in public streets.
- 12. Offences by whom triable.
- 13. Penalty for subsequent offence.
- 14. Application of fines.
- 15. Application of definition of "offence" in Indian Penal Code.
- 16. Certain sections to apply without extension.
- 17. (Repealed.)

BENGAL ACT 2 of 1867.

(THE BENGAL PUBLIC GAMBLING ACT, 1867.) [1]

(10th April, 1867.)

An Act to provide for the punishment of public gambling and the keeping of common gaming houses in the territories subject to the Lieutenant-Governor of Bengal. [2]

Whereas it is expedient to make provision for the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant-Governor of Bengal; [2] It is enacted as follows:--

1. In this Act, "common gaming-house" means any house, tent, Interpretaroom, space or walled enclosure,

in which cards, dice, tables or other instruments of gaming are kept or used for the profit or gain of the person owning, occupying, using or keeping such house, tent, room, space or enclosure, whether by way of charge for the use of the instruments of gaming or of the house, enclosure, room or place, or otherwise howsoever,

[3] [or in which rain-gambling, that is to say, wagering on the occurrence or non-occurrence of rain, is carried on for the profit or gain of any such person as aforesaid.]

1867, p. 141.

LOCAL EXTENT.—Sections 7 and 11 of this Act apply to the town and suburbs of Calcutta, and s. 13 applies to the whole of the former Province of Bengal (see s. 16, post, p. 72). Other sections of the Act apply to places to which they are extended by notification under section 2.

notification under section 2.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Part III, of this Code. It is in force in the Sonthal Parganas—see Vol. IV, Part IV of this Code; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. 1 of this Code. of this Code.

OTHER ENACTMENTS.—For further provisions as to gambling in Bihar and Orissa,

- (1) the Indian Penal Code (45 of 1860), s. 294A; and
- (2) the Indian Contract Act, 1872 (9 of 1872), s. 30, in General Acts, 1834-72, Ed. 1928, p. 439.
- [2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.
- [3] These words in square brackets in s. 1, were added by the Bengal Rain-Gambling Act, 1897 (Bengal Act 3 of 1897), s. 4 (1), printed post, p. 651.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,

(Secs. 2-3.)

[1][" gaming" shall include rain-gambling:

"instruments of gaming" shall include books or registers in which rain-gambling wages are entered, all other documents containing evidence of such wagers, and any thing used as a means of rain-gambling;

Power to extend Act.

2. It shall be competent to the Lieutenant-Governor of Bengal whenever he may think fit, to extend, by a notification[3] to be published in three successive numbers of the Calcutta Gazette, all or any of the sections of this Act, to any city, town (save the town of Calcutta as defined by Act 6 of 1863[4] passed by the Lieutenant-Governor of Bengal in Council) or place within the territories subject to his government, and in such notification to define, for the purposes of this Act, the limits of such city, town or place, and from time to time to alter the limits so defined.

Penalty for owing or keeping, or having charge of, common gaminghouse.

3. Whoever, being the owner or occupier, or having the use, of any house, tent, room, space or walled enclosure, situate within the limits to which this Act applies, opens, keeps or uses the same as a common gaming-house;

and whoever, being the owner or occupier of any such house, tent, room, space or walled enclosure as aforesaid, knowingly or wilfully permits the same to be opened, occupied, used or kept by any other person as a common gaming-house;

and whoever has the care or management of, or in any manner assists in conducting, the business of any house, tent, room, space or walled enclosure, as aforesaid, opened, occupied, used or kept for the purpose aforesaid;

and whoever advances or furnishes money for the purpose of gaming with persons frequenting such house, tent, room, space or walled enclosure.

^[1] The definitions of "gaming" and "instruments of gaming" were inserted by s. 4 (2) of the Bengal Rain-Gambling Act, 1897 (Ben. Act 3 of 1897). They are to be deemed to be in force on or from the 26th May 1897 in every city, town or place to which Bengal Act 2 of 1867 or any part thereof, was, before that day, extended by notification under its second section—see Bengal Act 3 of 1897, s. 1 (3), post p. 651.

[2] The clauses as to gender and number, which were repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, are omitted.

[8] For a list of notifications issued under section 2, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[4] Bengal Act 6 of 1863 was repealed by Bengal Act 4 of 1876, which again was repealed by Bengal Act 2 of 1888. Bengal Act 2 of 1888 was repealed by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act 5 of 1923), printed in the Supplement to the Bengal Code, 1924.

(Secs. 4-5.)

45 of 1860.

shall be liable, on conviction before any Magistrate, to a fine not exceeding two hundred rupees, or to imprisonment of either description, as defined in the Indian Penal Code,[1] for any term not exceeding three months.

4. Whoever is found in any such house, tent, room, space, or walled Penalty for enclosure, playing or gaming with cards, dice, counters, money or other being found instruments of gaming, or is found there present for the purpose of in common gaming, whether playing for any money, wager, stake or otherwise, house. shall be liable, on conviction before any Magistrate, to a fine not exceeding one hundred rupees or to imprisonment of either description, as defined in the Indian Penal Code,[1] for any term not exceeding one month; and any person found in any common gaming-house during any gaming or playing therein shall be presumed, until the contrary be proved, to have been there for the purpose of gaming.

5. If the Magistrate of a district[2] or other officer invested with Power to the full powers of a Magistrate [3] or the District Superintendent of enter and Police, upon credible information, and after such inquiry as he may authorize Police to think necessary, has reason to believe that any house, tent, room, space enter and or walled enclosure is used as a common gaming-house,

search.

he may either himself enter, or by his warrant authorize any officer of police, not below such rank as the Lieutenant-Governor shall appoint [4] in this behalf, to enter, with such assistance as may be found necessary, by night or by day, and by force if necessary, any such house, tent, room, space or walled enclosure, and may either himself take into custody, or authorize such officer to take into custody, all persons whom he or such officer finds therein, whether or not such persons may be then actually gaming;

and may seize or authorize such officer to seize all instruments of gaming, and all moneys and securities for money, and articles of value, reasonably suspected to have been used or intended to be used for the purpose of gaming, which are found therein;

and may search or authorize such officer to search all parts of the house, tent, room, space or walled enclosure which he or such officer shall have so entered, when he or such officer has reason to believe that any instruments of gaming are concealed therein, and also the persons of those whom he or such officer so takes into custody;

and may seize or authorize such officer to seize and take possession of all instruments of gaming found upon such search.

^[1] See Act 45 of 1860, s. 53. [2, 3] Now District Magistrate and Magistrate of the first class respectively—see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3 (2).

^[4] For orders made under section 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 6-11.)

Finding cards, etc., in suspect-ed houses to be evidence that they are common gaminghouses.

6. When any cards, dice, gaming-table, cloth, boards or other instruments of gaming are found in any house, tent, room, space or walled enclosure entered or searched under the provisions of the last preceding section, or about the person of any of those who are found herein, it shall be evidence, until the contrary is made to appear, that such house, tent, room, space or walled enclosure is used as a common gaming-house, and that the persons found therein were there present for the purpose of gaming, although no play was actually seen by the Magistrate or police-officer, or by any person acting under the authority of either of them.

Penalty for giving false name or address.

7. If any person found in any common gaming-house entered by any Magistrate or officer of police under the provisions of this Act, upon being arrested by any such officer, or upon being brought before any Magistrate, on being required by such officer or Magistrate to give his name and address, shall refuse or neglect to give the same, or shall give any false name or address, he may, upon conviction before the same or any other Magistrate, be adjudged to pay any penalty not exceeding five hundred rupees, together with such costs as to such Magistrate shall appear reasonable, and on the non-payment of such penalty and costs. or in the first instance if to such Magistrate it shall seem fit, may be imprisoned for any period not exceeding one month.

Destruction of instruments of gaming.

8. On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money, and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited; or, in his discretion, may order any part thereof to be returned to the persons appearing to have been severally thereunto entitled.

Proof of necessary.

9. It shall not be necessary, in order to convict any person of keeping playing for a common gaming-house, or of being concerned in the management of any common gaming-house, to prove that any person found playing therein at any game was playing for any money, wager or stake.

Act not to apply to certain games.

10. Nothing in the foregoing provisions of this Act contained shall be held to apply to billiards, whist or any other game of mere skill wherever played.

Gaming and setting birds to fight in public streets.

11. A police-officer may apprehend without warrant any person found and animals playing for money or other valuable thing with cards, dice, counters or other instruments of gaming used in playing any game, not being a game of mere skill, in any public market, fair, street, place or thoroughfare situated within the limits aforesaid.

(Secs. 12-14.)

or any person setting any birds or animals to fight in any public market, fair, street, place or thoroughfare situated within the limits aforesaid.

or any person there present aiding and abetting such public fighting of birds and animals.

Such person, when apprehended, shall be brought without delay before a Magistrate, and shall be liable to a fine not exceeding fifty rupees, or to imprisonment, either simple or rigorous, for any term not exceeding one calendar month.

and such police-officer may seize all birds and animals and instruments of gaming found in such public place or on the person of those whom he shall so arrest, and the Magistrate may, on conviction of the offender, order such instruments to be forthwith destroyed, and such birds and animals to be sold.

12. Offences punishable under this Act shall be triable by any Offences by Magistrate having jurisdiction in the place where the offence is com-triable. mitted.

But such Magistrate shall be restrained within the limits of his jurisdiction under the Code of Criminal Procedure[1] as to the amount 25 of 1861. of fine or imprisonment he may inflict.

> 13. Whoever, having been convicted of an offence punishable under Penalty for this Act, shall be guilty of any such offence, shall be subject for every offence. such subsequent offence to double the amount of punishment to which he would otherwise have been liable for the same :

Provided that he shall not be liable in any case to a fine exceeding six hundred rupees, or to imprisonment for a term exceeding one year.

14. * * * *[2] All fines * *[8] imposed under this Act Application *[4] shall (subject to the provisions contained in the last preceding of fines. section) be applied as the said Lieutenant-Governor shall from time to time direct.

•["]

[1] Act 25 of 1861 was repealed and re-enacted by Act 10 of 1872, which again was repealed and re-enacted by Act 10 of 1882. Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should

now be taken to be made to the latter Code-see s. 3 thereof.

^[2] The words and figures "The provisions for the recovery of fines contained in as. 64, 65, 66 and 67 of the Indian Penal Code and s. 61 of the Code of Criminal Procedure shall apply to," which were repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code are omitted.

^[8] The words "and penalties," which were repealed by ibid, are omitted.

^[4] The words "in any town or place other than the town of Calcutta; and such fines." which were repealed by ibid, are omitted.

^[5] The remaining portion of s. 14, relating to fines, which was repealed by ibid, is omitted.

72 The Bengal Public Gambling Act, 1867. [Ben. Act 2 of 1867.]

"(Secs. 15-17.)

Application in Indian Penal Code.

15. Anything made punishable by this Act shall be deemed to be 45 of definition an "offence" within the meaning of the Indian Penal Code.

Certain sections to apply without extension.

- **16.** The provisions of sections 7 and 11 of this Act shall * * *[1] apply to the town of Calcutta, and to the suburbs of the town of Calcutta as the same may be from time to time defined by any notification published by the Lieutenant-Governor in pursuance of Act 2 of 1866[2] passed by the Lieutenant-Governor of Bengal in Council; and the provisions of section 13 of this Act shall * * [1] apply to the whole of the said territories.
- 17. (Repeal of certain sections of Bengal Acts 2 and 4 of 1866.) Rep. by the Amending Act, 1903 (1 of 1903).

^[1] Formal words which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[2] The Calcutta Suburban Police Act, 1866. It is printed in the Bengal Code (1913-1915), Vol. II, p. 53.

BENGAL ACT 3 OF 1867.

(THE BENGAL PORTS ACT, 1867.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Interpretation.
- 2. Penalty for not having sufficient crew on vessels lying in port.
- 3. Power to exempt from maintaining crew on particular ships.
- 4. Power to revoke exemption.
- 5 Power to make order with respect to portions of ports
- 6. Application of section 2 to certain ships.
- 7. (Repealed.)
- 8. Power to charge port police upon port-fund.
- 9. Power to charge upon port-fund portion of expense of municipal police.
- 10. Power to impose police-port-dues.
- 11 to 13. (Repealed.)
- 14. Power to compound port-dues.
- 15. Power to vary port-dues.
- 16. Imposition or increase of port-dues to be published.
- 17. Recovery of penalties.
- 18. Penalties how disposed of.
- 19. Construction.
- 20. (Repealed.)

The First Schedule.

The Second Schedule.

The Third Schedule.

BENGAL ACT 3 of 1867.

(THE BENGAL PORTS ACT, 1867.)[1]

(10th April, 1867.)

An Act to amend the Law relating to ships lying in ports in the Provinces under the control of the Lieutenant Governor of Bengal. [2]

Whereas it is expedient to amend the law relating to merchant-ships Preamble. lying in ports in the Provinces under the control of the Lieutenant-Governor of Bengal; [2] It is enacted as follows:—

1. The following words and expressions for the purposes of this Act Interpretahave the meanings hereby assigned to them, unless where a contrary tion. intention appears from the context, that is to say:—

the word "master" denotes any person having temporary or perma- "Master." nent command or charge of any vessel otherwise than in the capacity of pilot or harbour-master:

the word "owner" includes any agent acting for and on behalf of "Owner." the owner of a ship at the port at which such ship shall lie or be;

the word "port" denotes any port within the Provinces aforesaid "Port." subject to the provisions of Act 22 of 1855 (for the regulation of Ports and Port-dues;)[3]

the word "Magistrate" includes any officer exercising any of the "Magispowers of a Magistrate under the Code of Criminal Procedure,[4] and any trate. Magistrate of Police[5] for the town of Calcutta;

25 of 1861.

1866, p. 2193.

LOCAL EXTENT.—This Act applies to all ports in the former Province of Bengal

LOCAL EXTENT.—Ins Act applies to all ports in the former Province of Bengal which are subject to the provisions of the Indian Ports Act, 1908 (15 of 1908)—see the title and preamble, and the definition of "port" in s. 1,

GEMERAL LAW.—The general Ports Act is the Indian Ports Act, 1908 (15 of 1908), printed in General Acts, 1898-1909, Ed. 1928, p. 5/5. The present Act is to be construed together with and as part of that Act—see s. 19, post, p. 78, and foot-note thereto.

[2] This includes the present Province of Bihar and Orissa except the district of

Sambalpur.

[8] Act 22 of 1855 was repealed and re-enacted by the Indian Ports Act, 1875 (12 of [8] Act 22 of 1855 was repealed and re-enacted by the Indian Ports Act, 1875 (12 of 1875), and the latter Act was repealed and re-enacted by the Indian Ports Act, 1889 (10 of 1889), which again has been repealed and re-enacted by the Indian Ports Act, 1908 (15 of 1908). The reference in the text to Act 22 of 1855 should now be construed as a reference to Act 15 of 1908, see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 344.

[4] Act 25 of 1861 was repealed and re-enacted by Act 10 of 1872, which again was repealed and re-enacted by Act 10 of 1882. The Act of 1882 has been repealed and re-enacted by the Code of Criminal Procedure 1898 (5 of 1898). This reference should now be taken to be made to the latter Code see S. 8, thereof

now be taken to be made to the latter Code, see s. 3, thereof.

[5] Now Presidency Magistrate—see the Code of Criminal Procedure. 1898 (Act 5 of 1898), s. 3 (2).

75

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.
LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,

(Secs. 2-5.)

" Municipal town."

sufficient

crew on

in port.

the expression "municipal town" denotes the town of Calcutta and every town, suburb, station, bazar, village and tract of country to which the provisions of Act 3 of 1864[1] (the District Municipal Improvement Act), passed by the Lieutenant-Governor of Bengal in Council, have been or shall be extended:

Penalty for not having

2. If any vessel of more than ten tons burden shall, without such license as hereinafter is mentioned, be affoat in any port within the Provinces under the control of the Lieutenant-Governor of Bengal, [3] vessels lying without having on board thereof a crew of not less than the number set forth in the first Schedule hereto, the master of such vessel, and in case there shall be no master of such vessel then the owner thereof, shall be punished with a fine not exceeding five hundred rupees.

Power to maintaining crew on particular ships.

3. Whenever it shall appear to the Conservator of any port that exempt from any vessel in such port may, without danger to other vessels in such port, be afloat without such crew as hereinbefore is mentioned being maintained thereon, it shall be lawful to such Conservator, if he shall think fit, to grant under his hand a license in the Form A in the second Schedule hereto, which license may be made determinable on the breach of any conditions therein contained; and during the continuance of such license the provisions of section 2 of this Act shall not apply to such vessel.

Power to revoke exemption.

4. It shall be lawful for such Conservator, by any writing under his hand in the Form B in the second Schedule hereto, to revoke such license; and, from and after the publication of such revocation, by posting a copy thereof upon some conspicuous part of such vessel, the provisions of section 2 of this Act shall apply to such vessel and to the master and owner thereof as if no such license had ever been granted.

Power to make order with respect to portions of ports.

5. Whenever it shall appear to the Conservator of any port that any creek, river or dock is so situate that vessels without any crew therein may remain afloat in such creek, river or dock, without danger to any vessels in any part of such port, it shall be lawful for such Conservator to make an order in the Form C in the second Schedule hereto, and from time to time, if he shall think fit, to revoke or amend such order:

^[1] Bengal Act 3 of 1864 was repealed and re-enacted by Bengal Act 5 of 1876. The latter Act was repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884) which again has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922). The reference in the text should now be taken to be made to the Act of 1922, printed in Vol. III of this Code.

^[2] The number and gender clause, which was repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, is omitted.

^[8] This includes the present Province of Bihar and Orissa except the district of Sambalpur,

(Secs. 6-13.)

Provided always that every such order, amendment and revocation shall be published in the Calcutta Gazette, and that no such order, amendment or revocation shall have any force or effect until it shall have been so published.

- 6. During such time as any such order shall remain in force the Application provisions of section 2 of this Act shall not apply to any vessel lying of section 2 or being within the limits of any such creek, river or dock, as the same ships. shall be defined by such order.
- 7. (Penalty on master omitting to take order to extinguish fire.) Rep. by the Indian Ports Act, 1875 (12 of 1875).
- 8. It shall be lawful for the Lieutenant-Governor of Bengal to Power to order (if and when he shall in his discretion think fit) that the entire charge port or any portion of the expense of maintaining the police-force in any port-fund. port which may be within or abutting upon any municipal town shall be borne by and paid out of the port-fund of such port.

9. It shall be lawful for the Lieutenant-Governor of Bengal, from Power to time to time, to assign to the persons charged with the management of charge upon port-fund the municipal fund of any municipal town upon which any port may portion of be abutting, or within which any port may be, such annual sums to be expense of charged upon and payable out of the port-fund of such port as to him municipal shall seem just and reasonable for or towards re-imbursing to such municipal fund such portion of the expense of the police-force in such town as may in the opinion of the said Lieutenant-Governor of Bengal, be rendered necessary by the resort to such town of seamen from ships lying or being in such port.

10. In case the port fund of any port shall, after providing for the Power to payment of all sums and charges now by law payable out of such portifolice portfund, be insufficient to pay any expense of police and annual sums which dues. shall, under the provisions aforesaid, be payable thereout, it shall be lawful for the said Lieutenant-Governor of Bengal, and he is hereby required, to order that there shall be paid, in addition to all port-dues and charges payable in respect of any ship from time to time lying or being in such port, such port-dues, to be called police-port-dues, as shall thereunto be necessary:

Provided that the same shall not exceed the port-dues in that behalf mentioned in the third Schedule to this Act.

11 to 13. (Imposition and application of hospital port-dues;[1] power to refuse port clearance till expenses under Merchant Shipping Act, 1854, s. 228, are paid.) Rep. by the Indian Ports Act, 1875 (12 of 1875).

^[1] As to the imposition and application of hospital-port-dues, see now the Indian Ports Act, 1908 (15 of 1908), ss. 49, 50, in General Acts, 1898-1909, Ed. 1928, pp. 402, 403.

(Secs. 14-20.)

Power to compound port-dues.

14. It shall be lawful for the owner of any vessel to pay to the Conservator of any port three times the amount of the police-port-dues and hospital-port-dues[1] which would, for the time being, be payable in respect of such vessel, and thereby to discharge such vessel from all further police-port-dues and hospital-port-dues in such port for the space of twelve calendar months from the day of the date of such payment.

Power to vary portdues. 15. It shall be lawful for the Lieutenant-Governor of Bengal, from time to time, to vary the rate of police-port-dues * *[2] payable in any port, as to him in his discretion shall seem fit, so as that the same shall not exceed the rates in the third Schedule * *[3] set forth.

Imposition or increase of portdues to be published, 16. No order of the Lieutenant-Governor of Bengal, imposing or increasing any port-dues under this Act, shall take effect until the expiration of six calendar months from the day upon which such order shall have been published in the Calcutta Gazette.

Recovery of penalties.

17. All complaints as to offences against this Act shall be heard and determined by a Magistrate within whose local jurisdiction the offence may be alleged to have been committed * * *[4].

Penalties how disposed of.

18. All penalties levied under this Act shall be applied as fines received under the said Act 22 of 1855[5] are directed to be applied.

Construction.

- 19. This Act shall be construed together with and as part of the said Act 22 of 1855. [5]
- 20. (Commencement of Act.) Rep. by the Repealing Act, 1873 (12 of 1873).

^[1] As to the imposition and application of hospital-port-dues, see now the Indian Ports Act, 1908 (15 of 1908),ss. 49, 50, in General Acts, 1898-1909, Ed. 1928, pp. 402, 403

^[2] The words "and hospital-port-dues," which were repealed by the Amending Act, 1903 (1 of 1903), in Vol. 1 of this Code, are omitted.

^[3] The word "respectively," which was repealed by ibid, is omitted.

^[4] The remainder of s. 17 (relating to the recovery of fines), which was repealed by *ibid*, is omitted. See now the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 29, in Vol. III of this Code.

^[5] Act 22 of 1855 was repealed and re-enacted by the Indian Ports Act, 1875 (12 of 1875), and the latter Act was repealed and re-enacted by the Indian Ports Act, 1889 (10 of 1889), which again has been repealed and re-enacted by the Indian Ports Act, 1908 (15 of 1908). The reference in the text to Act 22 of 1855 should now be construed as a reference to Act 15 of 1908—see the General Clauses Act, 1897, (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 344.

(Schedules.)

THE FIRST SCHEDULE.

(Referred to in section 2.)

				If Natives.	If Euro- peans.	Officers in charge.
Cargo-boats	•••			4	4	0
Vessels, not; being under, in moorings.	eargo-boats, of	600 tons	and	6	4	1
For every additional 1	O) tons	•••		13	1	. υ
Vessels notibeing carg	co-boats of 600	tons and 1	ander.	11	7½	1
For every additional 1	00 tons	•••		2	1	0

THE SECOND SCHEDULE.

(Referred to in sections 3, 4 and 5.)

FORM A.

	Ι () Conservator of the Port of		
		do hereby license the (s)	hip)	of which
		is master, to remain at h	er present	moorings,
in	the said port,	without having on board the cre	w required	by Act 3
of	1867 of the Lie	eutenant-Governor of Bengal in Co	ouncil:	•
	Provided alw	ays that, on breach of any of the	conditions	hereunder
wri	tten, this licer	ase shall forthwith absolutely cease	e and deter	mine.

FORM B.

Port of ()

Port of (

I () Conservator of the Port of do hereby revoke all license to the (ship) port without a crew therein.

)

to remain in

FORM C.

Port of ()

I () the Conservator of the Port of do hereby order that vessels lying in the following portion of the said

(Schedules.)

port (here set out the exempted limits) shall be exempt from the provisions of the second section of Act 3 of 1867 passed by the Lieutenant-Governor of Bengal in Council.

THE THIRD SCHEDULE.

(Referred to in sections 10 * * [1] and 15.)

PORT-DUES.

Police-port-dues.

For every vessel entering any port, two annas per ton.

^[1] The figures "11," which were repealed by the Amending Act, 1903 (1 of 1903), are omitted.

^[2] The provision as to hospital-port-dues, which was repealed by *ibid*, is omitted. As to the imposition of hospital-port-dues, see now the Indian Ports Act, 1908 (15 of 1908), s. 49, in General Acts, 1898-1909, Ed. 1928, p. 402.

BENGAL ACT 8 OF 1868.

(THE BENGAL LAND-REVENUE SETTLEMENT ACT, 1868.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Appeals under section 29, Regulation 7, 1822, to be presented within one month from date of decision appealed against.
- 2. (Repealed.)

BENGAL ACT 3 of 1868.

(THE BENGAL LAND-REVENUE SETTLEMENT ACT, 1868.)[1]

(1st July, 1868.)

An Act to amend the law respecting appeals in cases under Regulation 7 of 1822. [2]

Whereas it is expedient that the period for presenting appeals under Preamble. section 29 of Regulation 7 of 1822[2] should be assimilated to the period for bringing appeals in other cases pending before the revenueauthorities; It is enacted as follows:-

1. No petition of appeal presented under the provisions of section 29 Appeals of Regulation 7 of $1822\lceil^2\rceil$ shall be received after the expiration of thirty days from the date of the decision against which such appeal is presented, 29, Reguunless sufficient cause shall be shown for the delay to the satisfaction of lation 7, the authority to which such appeal is presented.

The days shall be reckoned from and exclusive of the day on which within one the decree was passed, and also exclusive of such time as may be requisite month from for obtaining a copy of the order appealed against.

1822, to be presented date of decision appealed against.

2. (Commencement of Act.) Rep. by the Repealing Act, 1873 (12) of 1873).

^[1] Short Title.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

Legislative Papers.—For Statement of Objects and Reasons, see Calcutta Gazette, 1868, p. 956, and for Proceedings in Council see ibid, Supplement, pp. 281, 293, 363 and 371.

LOCAL EXTENT.—The local extent of this Act is the same as that of the Bengal Land-revenue Settlement Regulation, 1822 (7 of 1822), s. 29, printed in Vol. I of this Code.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Part III of this Code; but its application is barred in-

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),

in Vol. I of this Code; and
the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of
1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws
Regulation, 1899 (3 of 1899), s. 3 in Vol. I of this Code.

^[2] The Bengal Land-revenue Settlement Regulation, 1822. It is printed in Vol. I of this Code.

BENGAL ACT 4 OF 1868.

[THE BENGAL ALLUVION (AMENDMENT) ACT, 1868.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. (Repealed.)
- 2. Accessions to island to be considered increment thereto.
- 3. Newly thrown up islands to be assessed.
- 4. Subsequent junction to mainland not to affect Government right.
- 5. Power to apply for ways across islands.
- 6. Applicant for ways to deposit money, and ways to be made.
- 7. Costs of ways how to be borne.
- 8. Ways to be public.

BENGAL ACT 4 of 1868.

[THE BENGAL ALLUVION (AMENDMENT) ACT, 1868.][1] (8th July, 1868.)

An Act to amend the provisions of Act 9 of 1847[2] (an Act regarding the assessment of lands gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Bihar and

Whereas it is expedient to amend the provisions of Act 9 of 1847; [2] Preamble. It is enacted and declared as follows:—

- 1. (Repeal of s. 7 of Act 9 of 1847.) Rep. by the Repealing Act, 1873 (12 of 1873).
- 2. It is hereby declared that when any island shall, under the Accessions provisions of clause 3, section 4, of Regulation 11 of 1825[3] of the Bengal to island Code, be at the disposal of Government, all lands gained by gradual considered increment accession to such island, whether from a recess of the river or of the thereto. sea, shall be considered an increment to such island, and shall be equally at the disposal of Government.

3. Whenever it shall appear to the local revenue-authorities that an Newly island has been thrown up in a large and navigable river liable to be thrown up taken possession of by Government under clause 3, section 4, of Regula-islands to be assessed. tion 11 of 1825[3] of the Bengal Code, the local revenue-authorities shall take immediate possession of the same for Government, and shall assess and settle the land according to the rules in force in that behalf, reporting their proceedings forthwith for the approval of the Board of Revenue. whose order thereupon, in regard to the assessment, shall be final:

Provided, however, that any party aggrieved by the act of the revenue-authorities in taking possession of any island as aforesaid shall be at liberty to contest the same by a regular suit in the Civil Court.

4. Any island of which possession may have been taken by the local Subsequent revenue-authorities on behalf of the Government under section 3 of this junction to Act shall not be deemed to have become an accession to the property mainland not to

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of affect 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,

1868, p. 508, and for Proceedings in Council, see ibid, Supplement, 1868, pp. 253, 337, 362, 372 and 388.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874) s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum, and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Part III of this Code. It is in force in the Sonthal Parganas; see Vol. IV, Part IV of this Code, but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

[2] The Bengal Alluvion and Diluvion Act, 1847. It is printed in Vol. I of this Code. The section of Act 9 of 1847 which was specifically "amended" by Bengal Act 4 of 1868 was s. 7, which is replaced by s. 3 of the present Act.

[3] The Bengal Alluvion and Diluvion Regulation, 1825. It is printed in Vol. I of this Code.

(Secs. 5-8.)

Government right.

of any person by reason of such channel becoming fordable after possession of such island shall have been so taken.

Power to apply for ways across islands. 5. Whenever an island, of which possession shall have been taken by Government under section 3 of this Act, shall become attached to the mainland, any person having an estate or interest in any part of the riparian mainland to which such island may become attached while it is in the possession of the Government may apply to the Collector to take measures for the construction of ways, paths and roads on the island: the costs thereof to be equally divided between the applicant and the Government.

Applicant for ways to deposit money, and ways to be made.

6. Thereupon the Collector may require the applicant to make such deposit of money as to the Collector shall seem sufficient, and, on such deposit being made, the Collector shall proceed to lay out and construct such ways, paths and roads in and through the island as he may deem necessary for securing access to the river or sea from the land to which the island may have become attached.

Costs of, ways how borne. 7. In every case the applicant shall be liable to pay and make good to the Government one-half of the costs of laying out and constructing such ways, paths and roads as aforesaid, and any moneys due from the applicant under the provisions of this section may be deducted and retained by the Collector out of the deposit so made by the applicant as aforesaid.

Ways to be public.

8. Every way, road and path, which shall be laid out or appointed under the provisions aforesaid, shall be deemed a public highway.

BENGAL ACT 7 OF 1868.

(THE BENGAL LAND-REVENUE SALES ACT, 1868)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Interpretation.
- 2. Appeals against sales.
- 3. Time for Revenue-sales extended.
- 4. Time for confirmation of sales extended.
- 5. Mode of serving notices.
- 6. Power to cause notices to be served for arrears or demands.
- 7. Notices to raiyats to be posted in sub-divisional cutcherry.
- 8. Certificate to be conclusive evidence of regularity in service of notices.
- 9. (Repealed.)
- 10. Collectorate to include all estates borne on its roll.
- 11. Power to sell tenures.
- 12. Effect of sale of tenure.
- 13. Power of enhancement.
- 14. Saving of right of raiyat.
- 15 to 29. (Repealed.)
- 30. Construction.

SCHEDULES A to E. (Repealed.)

BENGAL ACT 7 of 1868.

(THE BENGAL LAND-REVENUE SALES ACT, 1868.)[1]

(26th August, 1868.)

An Act to make further provision for the recovery of arrears of landrevenue and public demands recoverable as arrears of land-revenue.

Whereas it is expedient to amend and extend the law for the recovery Preamble. of arrears of land-revenue and of public demands recoverable as arrears of land revenue; It is declared and enacted as follows:---

1. In this Act, and in Act 11 of 1859[2] (to improve the law relating Interpretato sales of land for arrears of revenue in the Lower Provinces under the tion. Bengal Presidency), the words in this section mentioned shall have the meanings therein attributed to them, respectively-

the word "proprietor" includes any tenant by whom any estate "Proprieor tenure is held directly under Government:

the word "revenue" includes every sum annually payable to "Revenue." Government by the proprietor of any estate or tenure in respect thereof, and every sum payable to Government in respect of takavi, or of any money advanced by Government to proprietors of land for making or repairing embankments, reservoirs or watercourses, or other improvements on the land held by them:

the word "estate" means any land or share in land subject to the "Estate. payment to Government of an annual sum in respect of which the name

[1] Short Title.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette.

^{1868,} p. 471; and for Proceedings in Council, see ibid, Supplement, 1868, pp. 247, 281, 390, 413, 509 and 523.

S90, 413, 509 and 523.

LOCAL EXTENT.—Since this Act is (see s. 30, post, p. 96) to be read with and taken as part of the Bengal Land-Revenue Sales Act, 1859 (11 of 1859), it has the same local extent as that Act, printed in Vol. I of this Code.

The Act has been extended, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to the following Scheduled Districts, namely:—

the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Part III of this Code.

It is in force in the Sonthal Parganas—see Vol. IV, Part IV of this Code; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

Annotated Reprint.—This Act is reprinted, with notes of cases decided by the High Court and of important rulings of the Board of Revenue, in the Bihar and

ANNOTATED MEPRINT.—This Act is reprinted, with notes of cases decided by the High Court and of important rulings of the Board of Revenue, in the Bihar and Cirissa Sale Law Manual, 1923, p. 92.

THE CERTIFICATE PROCEDURE.—As to the recovery, under the certificate procedure, of arrears of revenue not realised by sale under the present Act, and of money declared to be recoverable under the present Act, see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6), and Sch. I, in Vol. III of this Code.

^[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Sec. 2.)

of a proprietor is entered on the register known as the general register of all revenue-paying estates, or in respect of which a separate account may, in pursuance of section 10 or section 11 of the said Act 11 of $1859,\lceil 1 \rceil$ have been opened:

"Tenure."

the word "tenure" includes all interests in land, whether rentpaying or lakhiraj (other than estates as above defined), and all fisheries, which, by the terms of the grants creating the same or by the custom of the country, are transferable, whether such tenures are resumable or not, and whether the right of selling or bringing them to sale for an arrear of rent may or may not have been specially reserved by stipulation in any instrument:

" Jurisdiction."

the "jurisdiction" of a Collector means the district to which such Collector is appointed, or throughout which any officer vested with the powers of a Collector is authorized to exercise such powers:

" Collector."

the word "Collector" includes any person vested with the powers of a Collector.

*[2]

Appeals against sales.

2. It shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this Act or the said Act 11 of 1859,[1] * *[3] so that such appeal be preferred to such Commissioner on or before the sixtieth day from the day of sale, reckoning as in section 23 of the said Act 11 of 1859,[1] or be presented to the Collector or other officer duly authorized to hold sales under the said Act for transmission to the Commissioner on or before the forty-fifth day from the day of sale, reckoning as aforesaid, and not otherwise;

and the Commissioner shall be competent, in every case of appeal so preferred, to annul any sale of an estate or share of an estate made under this Act or Act 11 of 1859,[1] which shall appear to him not to have been conducted according to the provisions of the said Acts, awarding at the same time to the purchaser a payment from the proprietor of compensation[4] for his loss, if the sale shall have been occasioned by neglect of the proprietor, such compensation not to exceed the interest at the highest rate of the current Government securities on the amount of deposit or balance of purchase-money during the period of its being retained in the Collector's office;

and the order of the Commissioner shall in such cases be final,

^[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

^[2] The remainder of s. 1, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted.

[8] The words "not being a sale made under, and by virtue of, any execution issued upon a certificate made as hereinafter is provided," which were repealed by ibid, are

^[4] As to the recovery under the certificate procedure of sums awarded as compensation under this Act, see the Bihar and Orissa Public Demands Receivery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6), and Sch. I, in Vol. III of this Code.

(Secs. 3-6.)

- * * * [1] The word "thirty" shall be substituted for the Time for word 'fifteen 'lin'section 6 of the said Act 11 of 1859[2] * * *[8] revenue-sales extended.
- 4. * * *[1] The words "sixtieth" and "sixty" shall be Time for substituted 'for the words "thirtieth" and "thirty" respectively, of sales wherever the said words occur in section 27 of the said Act 11 of 1859. [2] extended.

5. Every notice in and by this Act, or by the said Act 11 of 1859,[2] Mode of serving directed to be served, shall be served by delivering to the person to notices. whom it may be directed, a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person to some adult male member of his family, or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last-known place of abode of such person.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

6. It shall be lawful for the Lieutenant-Governor of Bengal, by Power to an order published in the Calcutta Gazette, to empower all Collectors in cause notices to be served any district in such order mentioned, if they shall think fit, to cause for arrears such notices as shall be in such order specified to be served upon any or demands. proprietors * * *[4] before proceeding under the provisions of the said Act 11 of 1859[2] or of this Act, to realize from such proprietors * *[5], any arrears of revenue * *[6] which may be due from such proprietors * *[5].

and the costs of serving any such notices as shall be served under the powers conferred by any such order, not exceeding such sums as shall in such order be specified, shall be added to any arrears of revenue * * *[7] which may be due from such proprietors * *[5], and shall be recoverable as if the same were a portion of such arrears of revenue * * *[8],

^[1] The words "From the date when this Act comes into operation," in ss. 3 and 4, which were repealed by the Amending Act 1903 (1 of 1903), in Vol. I of this Code, are omitted.

^[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of the Code.

^[8] The remainder of s. 3 (which repealed the words "or more than thirty" in s. 6 of Act 11 of 1859) was repealed by the Amending Act, 1903 (1 of 1903), and is omitted.

^[4] The words "or persons liable to any demands," which were repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), are omitted.

^[5] The words "or persons" which were repealed by ibid, are omitted.

^[6] The words " or any demands," which were repealed by ibid, are omitted.

^[7] The words "or to any demands" which were repealed by ibid, are omitted.

^[8] The words "or of such demands" which were repealed by ibid, are omitted,

(Secs. 7-11.)

and every such order may from time to time be altered, varied or revoked by any other order of the said Lieutenant-Governor to be from time to time in like manner published.

Notices to raiyats to be posted in sub-divisional cutcherry. Certificate to be conclusive evidence of regularity in service of notices.

- 7. In addition to the notices in and by section 7 of the said Act 11 of 1859[1] directed to be posted, a similar notice shall be posted at the subdivisional *cutcherry* within the jurisdiction of which the estate to which such notice refers, or some portion thereof, is situate.
- 8. Every certificate of title which may be given to any purchaser under the provisions of section 28 of the said Act 11 of 1859,[1] or of section 11 of this Act, shall be conclusive evidence, in favour of such purchaser and of every person claiming under him, that all notices in or by this Act, or by the said Act 11 of 1859[1] required to be served or posted, have been duly served and posted;

and the title of any person who may have obtained any such certificate shall not be impeached or affected by reason of any omission, informality or irregularity as regards the serving or posting of any notice in the proceedings under which the sale was had at which such person may have purchased.

9. (Sales of lakhiraj valid.) Rep. by the Amending Act, 1903 (1 of 1903.)

Collectorate to include all estates borne on its roll.

10. Every estate shall, for the purposes of this Act and of the said Act 11 of 1859,[1] be deemed to be within the collectorate of the Collector upon whose general register the revenue thereof may be borne, although the whole or any portion of the lands comprised in such estate may be without the local limits of his jurisdiction; but all lands and tenures shall be deemed to be within the jurisdiction within the local limits of which they may be situate, although the estate of which they form a part may, under the provisions of this section, be deemed to be within the collectorate of any other Collector.

Power to sell tenures.

[2]11. Whenever any revenue payable to Government in respect of any tenure not being an estate shall be in arrear after the latest day of payment fixed in the manner prescribed in section 3 of Act 11 of 1859,[1] the Collector to whom such revenue is payable may cause the tenure to be sold in the manner and subject to the provisions in and by the said Act 11 of 1859[1] provided for the sale of estates for the recovery of arrears of revenue;

and the Collector shall apply the purchase-money arising from such sale according to the provisions of section 31 of the said Act 11 of 1859,[1] except that the residue, if any, shall be held in deposit on account of

The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.
 This section was substituted for the original s. 11 by the Bengal Land-revenue
 Sales (Amendment) Act, 1871 (Ben. Act 2 of 1871), post, p. 147.

(Sec. 12.)

the holder of the tenure and not on account of the proprietor of the estate:

and every such Collector shall, upon every such sale of any tenure being final and conclusive, give to the purchaser thereof such certificate of title thereof as is provided in section 28 of the said Act 11 of 1859[1] with respect to estates:

Provided that no tenure shall be sold for the recovery of arrears of revenue other than those of the current year or of the year immediately preceding, nor for the recovery of arrears of revenue due by tenures under attachment by order of any judicial authority, unless and until after a notification in the language of the district, specifying the nature and amount of the arrear and the latest date on which payment thereof shall be received, shall have been fixed, for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of Act 11 of 1859,[1]

in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, and in the Munsif's Court and police-thana of the division in which the tenure to which the notification relates is situated, or, if the tenure be situated within the jurisdiction of more than one Munsif's Court or police-thana, in some one or more of such Courts or thanas, and also at the cutcherry of the malguzar or owner of the tenure, or at some conspicuous place upon the tenure, the same to be certified by the peon or other person employed for the purpose.

12. The purchaser of any tenure sold under the provisions of section Eject of Il of this Act shall acquire it free from all incumbrances which may sale of have been imposed upon it after its creation, or after the time of settle-tenure. ment, whichever may have last occurred, and shall be entitled to avoid and annul all under-tenures, and forthwith to eject all under-tenants, with the following exceptions:-

First.—Istimrari or mukarrari tenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly.—Tenures existing at the time of permanent settlement which have not been held at a fixed rent:

Provided always that the rent of such tenures shall be liable to enhancement under any law for the time being in force for the enhancement of the rent of such tenures.

Thirdly.--Tenures created or recognized by the settlementproceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement.

Fourthly.—Tenures of lands whereon dwelling-houses, manufactories or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made.

^[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

(Secs. 13-30; Schedules.)

Power of enhancement.

13. Every purchaser of a tenure under section 11 of this Act shall be entitled to proceed in the manner prescribed by any law for the time being in force for the enhancement of the rent of any land coming within the fourth class of exceptions above made, if he can prove the same to have been held at what was originally an unfair rent, unless the same shall have been held for a term exceeding twelve years at a fixed rent equal to the rent of good arable land.

Saving of right of raiyat.

- 14. Provided always that nothing hereinbefore contained shall be construed to entitle any such purchaser, under section 11 of this Act, to eject any raiyat having a right of occupancy at a fixed rent, or at a rent, assessable according to fixed rules under the laws in force, or to enhance the rent of any such raiyat otherwise than in the manner prescribed by such laws, or otherwise than as the former proprietor, irrespectively of all engagements made since the time of settlement, may have been entitled to do.
- 15 to 28. (Certificates of unliquidated arrears executable as decree of Civil Court; notice of certificate; objections to certificate; enforcement of certificate; register of certificates; inspection of register; entry of satisfaction; transmission of sums received.) Rep. by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880).
- 29. (Repeal of enactments.) Rep. by the Repealing Act, 1873 (12 of 1873).

Construction. 30. This Act shall be read with, and taken as part of, the said Act 11 of 1859[1] as modified by Act 3 of 1862[2] of the Lieutenant-Governor of Bengal in Council.

SCHEDULES A, B, C, D.

Rep. by the Amending Act, 1903 (1 of 1903).

SCHEDULE E.

Rep. by the Repealing Act, 1873 (12 of 1873).

^[1] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.
[2] The Bengal Land-revenue Sales (Amendment) Act, 1862. It is printed, ante

BENGAL ACT 1 OF 1869.

(THE BENGAL CRUELTY TO ANIMALS ACT, 1869.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Definition of "animal."
- 2. Penalty on cruelty to animals.
- 3. Penalty on baiting animals, or inciting them to fight.
- 4. Penalty on permitting diseased animals to go at large or die in public places.
- 5. Penalty for employing animal unfit for labour.
- 5A. Penalty for practising phuka.
- 5B. Infirmaries.
- 5C. Limitation of prosecutions.
- 6. Trial of offences in Calcutta.
- 7. Trial of offences out of Calcutta.
- 8. (Repealed.)
- 9. Limit of Act.
- 10. Power to extend Act.

BENGAL ACT 1 OF 1869.

(THE BENGAL CRUELTY TO ANIMALS ACT, 1869.)[1]

(10th March, 1869.)

An Act for the Prevention of Cruelty to Animals.

Whereas it is expedient to make provision for the prevention of Preamble. cruelty to animals: It is enacted as follows:-

- [2]1. In this Act, the word "animal," means any domestic or Definition of captured animal. " animal ".
- 2. Every person who shall cruelly and wantonly beat, illtreat, Penalty on abuse, torture, overdrive or overload, or cause to be beaten, ill-treated, cruelty to abused, tortured, overdriven or overladen, any animal, shall be liable to a fine which may extend to one hundred rupees.

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

Ben. Acts, 1 and 3 of 1869 and 3 of 1900 may be cited together as the Bengal

Cruelty to Animals Act, 1869 to 1900—see Ben. Act 3 of 1900, s. 3 (2), post, p. 711.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette,

1868, p. 887, and for Proceedings in Council, see *ibid*, Supplement, 1868, pp. 278 and 877; Supplement, 1869, pp. 15 and 29.

Local Extent.—This Act applies to the town and suburbs of Calcutta (see s. 9, 20st, p. 101), and may be extended to any city, town, station, bazar, cantonment, village, district or portion of a district in Bengal (see s. 10, post, p. 101).

The application of the Act is barred-

in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s., 3 (2),

in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s., 5 (2), in Vol. I of this Code:
in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872
(3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3 in Vol. I of this Code.

ARREST.—For power of police to arrest, without a warrant, persons committing offences against this Act, see Ben. Act 3 of 1869, post, p., 113.

Other Acts.—A similar Act, passed by the Governor General of India in Council is the Prevention of Cruelty to Animals Act, 1890 (11 of 1890), printed in General Acts, 1887-97, Ed. 1928, p. 168. Power to extend that Act, or any part of it, to Bihar and Orissa is given by s. 1 (2). For a list of notifications issued under section 1 (2) of Act 11 of is given by s. 1 (2). For a list of notifications issued under section 1 (2) of Act 11 of 1890 extending that Act to places in Bihar and Orissa, see the Bihar and Orissa Local

Statutory Rules and Orders, Vol. I, Part IV.

Other enactments giving powers of punishment for cruelty to animals are the Indian Penal Code (45 of 1860), ss. 428, 429, the Police Act, 1861 (5 of 1861), s. 34, cl. 2 (printed in General Acts, 1834-72, Ed. 1928, p. 126), and the Stage-Carriages Act, 1861

(16 of 1861), s. 9 (printed in ibid, p. 133).

For power to make rules for prevention of cruelty to animals-

in public parks, see the Bengal Public Parks Act, 1904 (Ben. Act 2 of 1904), s. 4(2) (e), (j), post, p. 723.

[2] This section was substituted for the original s. 1 by the Bengal Cruelty to Animals Act, 1900 (Ben. Act 3 of 1900), s. 1, post, p. 711.

The original section ran thus:-"1. The word 'animal' shall be taken to mean any domestic or tamed quadruped, or any domestic or tamed bird."

(Secs. 3-5B.)

Penalty on baiting animals, or inciting them to fight.

3. Every person who shall incite any quadrupeds or birds, whether or domestic or wild, to fight, or shall bait any animal, or shall aid or shall abet any one in so doing, shall be liable to a fine which may extend to fifty rupees.

Penalty on permitting diseased animals to go at large or die in public places. 4. Every person who shall wilfully and knowingly permit any animal, of which he may be owner, to go at large in any public street, road or thoroughfare, while such animal is affected with contagious or infectious disease, or shall wilfully permit any diseased or disabled animal, of which he may be owner, to die in any public street, road or thoroughfare, shall be liable to a fine which may extend to one hundred rupees.

Penalty for employing animal unfit for labour.

[1]5. If any person employs in any work or labour any animal which, by reason of any disease, infirmity, wound, sore or other cause, is unfit to be so employed, or permits any such unfit animal in his possession or under his control to be so employed, he shall be punished with fine which may extend to one hundred rupees.

Penalty for practising phuka.

[1]5A. If any person performs upon any cow the operation called *phuká* he shall be punished with fine which may extend to one hundred rupees, or with imprisonment which may extend to three months, or with both.

Infirmaries.

- [1]5B. (1) The Local Government may, by general or special order, appoint places to be infirmaries for the treatment and care of animals in respect of which offences against this Act have been committed.
- (2) The Magistrate before whom a prosecution for such an offence has been instituted may direct that the animal in respect of which the offence is proved to have been committed shall be sent for treatment and care to an infirmary and be there detained until it is, in his opinion, again fit for the work or labour on which it has been ordinarily employed.
- (3) The cost of the treatment, feeding and watering of the animal in the infirmary shall be payable by the owner of the animal according to such scale of rates as the District Magistrate or, in the case of an infirmary in a Presidency-town, the Commissioner of Police, may from time to time prescribe.
- (4) If the owner refuses or neglects to pay such cost and to remove the animal within such time as the Magistrate referred to in sub-section (2) may prescribe, such Magistrate may direct that the animal be sold and that the proceeds of the sale be applied to the payment of such cost.

^[1] Ss. 5 to 5C were substituted for the original s. 5 by Ben. Act 3 of 1900, s. 2, post, p. 711.

The original section 5 ran thus:—

[&]quot;Every person who shall employ or cause to be employed in any work or labour, any animal which, in consequence of any disease, infirmity, wounds, or sores, is unfit to be so employed, shall be liable to a fine which may extend to fifty rupees."

(Secs. 5C-10.)

- (5) The surplus, if any, of the proceeds of the sale shall, on application made by the owner within two months after the date of the sale, be paid to him; but the owner shall not be liable to make any payment in excess of the proceeds of the sale.
- [1]5C. A prosecution for an offence against this Act shall not be Limitation instituted after the expiration of three months from the date of the of prosecucommission of the offence.
- 6. All complaints of offences against the provisions of this Act, Trial of alleged to have been committed in the town of Calcutta, shall be heard offences in and determined in a summary way by some Police Magistrate[2] of Calcutta.
- 7. Every charge of an offence against the provisions of this Act, Trial of alleged to have been committed out of Calcutta, may be heard and off Calcutta. determined by any officer authorized to exercise any of the powers of a Magistrate in the place in which such offence may be alleged to have been committed, and the provisions of the Code of Criminal Procedure[3] shall apply to the trial of every such charge.

23 of 1861.

- 8. (Repeal of enactments.) Rep. by the Repealing Act, 1873 (12 of 1873).
- 9. This Act shall extend to the town of Calcutta and to the suburbs Limit of of the town of Calcutta as defined by any notification under section 1 Act. of [4] [Bengal Act 2 of 1866].
- 10. It shall be lawful for the Lieutenant-Governor of Bengal, by Power to an order[5] published in the Calcutta Gazette, to extend this Act to any extend Act. city, town, station, bazar, cantonment, village, district or portion of a district, to be mentioned and defined in such order; and from time to time, by any order published, as aforesaid, to revoke, vary, amend or alter any such order.

The original section 5 ran thus:-" Every person who shall employ or cause to be employed in any work or labour, any animal which, in consequence of any disease, infirmity, wounds, or sores, is unfit to be so employed, shall be liable to a fine which may extend

to fifty rupees." [2] Now " Presidency Magistrate "-see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3.

[3] This reference to Act 25 of 1861 must now be taken to be made to the Code of Criminal Procedure, 1898 (5 of 1898)—see s. 3 (1) of the latter Act.

[4] These words and figures in square brackets in s. 9 were substituted for the words and figures "the said Act 2 of 1866" by the Amending Act, 1903 (1 of 1903), printed in Vol. I of this Code. The short title of Bengal Act 2 of 1866 is "The Calcutta Suburban Police Act, 1866." The Act is printed in the Bengal Code (1913-1915)

Vol. II, p. 53. [5] For a list of orders made under s. 10, see the Bihar and Orissa Local Statutory

Rules and Orders, Vol. I, Part VI.

^[1] Ss. 5 to 5C were substituted for the original s. 5 by Ben Act 3 of 1900, 2, post. p. 711.

BENGAL ACT 2 OF 1869.

(THE CHOTA NAGPUR TENURES ACT, 1869.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Construction.
- 2. Power to appoint Commissioners. Limits of jurisdiction.
- 3. Duties of Special Commissioner.
- 4. Powers of Special Commissioner.
- 5. Contents of record.
- 6. Power to restore persons wrongfully dispossessed.
- 7. Presumption as to services to be rendered.
- 8. Lands not to be registered if tenure commenced within twenty years.
- 9. Power to apply for commutation of services.
- 10. On such application, notice to appoint assessors to be served.
- 11. Special Commissioner to hear application with assessors.
- 12. Decision to be by Special Commissioner.
- 13. Review of decision by Special Commissioner alone.
- 14. Power of appeal.
- 15. Power to apply for review of judgment.
- 16. Application within a month.
- 17. Power to grant or refuse review.
- 18. Review not to be granted without notice.
- 19. On grant of application for review, re-hearing to be directed.
- 20. Decision to be final.
- 21. No mukhtar nor vakil to be heard.
- 22. (Repealed.)
- 23. Lieutenant-Governor may make rules.
- 24. Effect of judgment in suits commenced after Act passed.
- 25. Register to be confirmed and published.
- 26. Register to be conclusive evidence of matters recorded therein.
- 27. Short title.

BENGAL ACT 2 OF 1869.

(THE CHOTA NAGPUR TENURES ACT, 1869.)[1]

(17th March, 1869.)

An Act to ascertain, regulate and record certain tenures in Chota Nagpur.

Whereas from a very early time certain tenures have existed in ChotaPreamble. Nagpur, known as bhuinharri, held by persons claiming to be descendants of the original founders of the villages in which such lands are situated, or their assigns; and also certain similar tenures known as bhetkheta, dálikatari and pahnai, consisting of lands set apart for the duties which the village "pahan," or priest, is required to perform, and for his maintenance, and also other similar tenures known as " mahtoai." consisting of lands allotted to the village mahto, or collector of rents;

And whereas, where the above tenures are found, there are also lands known as majhahas, reserved for the use of the respective proprietors of the villages, and at their absolute disposal, and also lands known as bhetkheta, ordinarily assigned as remuneration to the villagers who work for the proprietor or his assigns on the majhahas land;

And whereas disputes have arisen rendering it desirable that these tenures should be defined and recorded, and a register made of all rights. privileges, immunities and liabilities affecting the holders thereof;

It is enacted as follows:--

1. In the construction of this Act, the words and expressions Construcfollowing shall have the meaning hereinafter in this section attributed tion. to them respectively, unless a contrary sense be apparent from the context:

the word "bhuinharri" shall include the tenures mentioned in the "Bhuinpreamble as bhetkheta, dálikatari, pahnai and mahtoai:

the word "majhahas" shall include the tenures mentioned in the "Majhapreamble as bhetkheta:

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1868, p. 1848, and for Proceedings in Council, see ibid, Supplement, 1868, pp. 846 and 871; Supplement, 1869, pp. 16 and 30.

LOCAL EXTENT.—This Act extends only to the Chota Nagpur Division—see the title.

SAVINGS.—This Act is not affected by the Chota Nagpur Tenancy Act, 1908 (Ben. Act 6 of 1908)—see s. 271 of the latter Act, post, p. 912.

(Secs. 2-7.)

"The special Commissioner."

the words "the Special Commissioner" shall be taken to mean a Commissioner to be appointed for the purposes of this Act.

Power to appoint Commissioners.

2. It shall be lawful for the Lieutenant-Governor of Bengal, by an order published in the Calcutta Gazette, to appoint one or more persons, as may be judged expedient, to be a Commissioner or Commissioners for the purposes of this Act, and by an order, also published in the Calcutta Gazette, to define the limits within which each Special Commissioner so to be appointed shall exercise jurisdiction under this Act; and from time to time, in like manner, to vary or revoke any order made by the said Lieutenant-Governor under the provisions of this Act, and to appoint some other person or persons to be Commissioners for the purposes of this Act.

Limits of jurisdiction.

3. Each Special Commissioner so appointed shall, with all convenient speed, investigate and ascertain the titles and tenures of all lands within the limits so assigned to him, which may be alleged by any person to be held upon *bhuinharri* and *majhahas* tenures respectively, and shall demarcate the same.

Powers of Special Commissioner.

Duties of

Special

Commissioner.

4. In making such investigation, the Special Commissioner, in addition to all powers conferred on him by this Act, shall, as far as may be necessary for the purposes of this Act, exercise all such and the same powers as are conferred by Regulation 7 of 1822,[1] and the Regulations and Acts amending the same, upon a Collector making a settlement of land-revenue.

Contents of record.

5. The Special Commissioner shall make an accurate register, in such form as may from time to time be ordered by the Lieutenant-Governor of Bengal, of the lands which he may ascertain to belong to the bhuinharri and majhahas classes respectively; of the conditions to be fulfilled, and the rents and services to be rendered in respect of the several lands of those classes which he may ascertain to be held subject to any conditions, rents or services; and of the rights and privileges to be enjoyed in respect of any such lands.

Power to restore persons wrongfully dispossessed.

6. In case it shall be proved to the Special Commissioner that any person, who within twenty years next before the passing of this Act held any lands of bhuinharri or majhahas tenure, has been wrongfully dispossessed of such lands, the Special Commissioner shall cause such person, or, in case of his being dead, the heir of such person, to be put in possession of such lands, and shall cause the name of the person so put in possession to be entered in the register as the occupant of the said lands on any bhuinharri or majhahus tenure, as the case may be.

Presumption as to services to be rendered.

7. It shall be presumed that all lands which may be found under the provisions of this Act to be of *bhuinharri* or *majhahas* tenure respectively are rightly subject to the conditions, rents and services upon

^[1] The Bengal Land-revenue Settlement Regulation 1822, in Vol. I of this Code.

(Secs. 8-11.)

which such lands respectively are found to be held at the time of the inquiry made by the Special Commissioner, unless it be proved that at some former time, within twenty years before the passing of this Act, such lands were held subject to and upon other and different conditions, rents and services; in which case it shall be presumed that such lands are rightly subject to the conditions, rents and services subject to which they shall be proved to have been held at the earliest period within the said term of twenty years with respect to which such proof shall have been given.

8. No lands shall be registered as lands of bhuinharri or majhahas Lands not to tenure if it be proved that the occupation of such lands upon such be registenure commenced within the term of twenty years before the passing tenure of this Act, unless it be proved that such occupation was in pursuance commenced within twenor revival of an occupation upon such tenure rightfully enjoyed before ty years. the commencement of such term.

9. Whenever any lands of bhuinharri tenure are held subject to any Power to conditions or services other than or besides the payment of a rent in apply for money, it shall be lawful for the bhuinharri tenant of such lands, or for tion of any person who may have the immediate right of receiving the rents services. and services issuing from such lands (provided such last-mentioned person has such right in perpetuity), or if there be no such person other than the zamindar then for the zamindar, to apply in writing to the' Special Commissioner for the commutation of all such conditions and services other than or besides the payment of a rent in money.

10. On receipt of any such application, the Special Commissioner On such shall cause to be served upon each of the persons who under the provinction, notice to sions of section 9 would have a right to make such application, a notice appoint in writing requiring such person, within 10 days from the day of the assessors to be served. service of such notice, to nominate, by notice in writing to the Special Commissioner, some person to act as assessor to the Special Commissioner, in fixing the amount of rent which shall be payable in commutation for such conditions and services, and to be present before the Special Commissioner, and to cause such assessor to be there present upon some day to be named in such notice and not to be less than fifteen days from the day of the service of such notice.

11. Upon the day which shall have been appointed by the Special Special Commissioner for the attendance of the parties and assessors as herein-sioner to before is provided, the Special Commissioner shall, with the assistance hear applicaof any assessors who may have been, within the time hereinbefore tion with assessors. respectively in that behalf mentioned, duly nominated as aforesaid, and who may be present, and, if there be no such assessors, then without such assistance, proceed to consider and determine the amount of rent fairly and equitably to be payable in commutation of the conditions and services other than rent to which such tenure may be subject.

(Secs. 12-19.)

Decision to be by Special Commissioner.

12. The opinion of each assessor shall be given orally, and shall be recorded in writing by the Special Commissioner, but the decision is vested exclusively in the Special Commissioner.

Review of decision by Special Commissioner alone.

13. In case any review of any decision under section 12 may be ordered, such review shall be heard and determined by the Special Commissioner without the assistance of assessors; and in case, in consequence of any order on appeal, a further inquiry into the subject-matter of any such decision may be necessary, such further inquiry may, if he shall so think fit, be heard and determined by the Special Commissioner without the assistance of assessors.

Power of appeal.

14. Any person who may be aggrieved by any decision or order of the Special Commissioner made under this Act may appeal to the Commissioner of the division against such decision or order by a petition; but no such petition shall be received after the expiration of three months from the date of such decision or order, unless sufficient cause for the delay be shown to the satisfaction of the said Commissioner of the division, who shall have power to hear and determine the matter of every such petition of appeal.

Power to apply for review of judgment.

15. Any person considering himself aggrieved by any order or decision of the Special Commissioner from which no appeal shall have been preferred, or by any order of the Commissioner of the division in appeal, may apply for a review of judgment by the officer by whom such order or decision was made.

Application within a month.

16. Such application may be made within one month from the date of the order or decision, and not afterwards.

Power to grant or refuse review.

17. If the Special Commissioner or the Commissioner of the division, as the case may be, shall be of opinion that there are not any sufficient grounds for a review, he shall reject the application: but if he shall be of opinion that the review desired is necessary to correct an evident error or omission, or is otherwise requisite for the ends of justice, the Special Commissioner or the Commissioner of the division, as the case may be, shall grant the review, and his order in either case, whether for rejecting the application or granting the review, shall be final.

Review not notice.

18. No review of an order or decision shall be granted until notice to be gran-ted without shall have been given to every person who had appeared in the proceedings in which such order or decision was made, and whose interest would be injuriously affected by the review desired.

On grant of application be directed.

19. When an application for a review of judgment is granted, such application order shall be made for re-hearing the matter in respect of which such rehearing to order or decision shall have been made as may seem proper.

(Secs. 20-27.)

20. No decision or order of the Special Commissioner shall be in Decision to any way altered, varied or reversed, save on review by the Special Commissioner under sections 15, 16, 17, 18 and 19 of this Act, or by appeal to the Commissioner of the division under section 14 of this Act; and no suit shall be received in any Court to vary or set aside any such order or decision of the Special Commissioner, or any decision or order upon appeal or upon review by the Commissioner of the division made under the provisions of this Act; and every such decision or order upon appeal by the Commissioner of the division shall be final, unless it be altered, varied or reversed by the said Commissioner on review under sections 15, 16, 17, 18 and 19 of this Act.

21. No mukhtar nor vakil shall, without the consent of the Special No mukhtar be heard in any proceeding before such Special he heard. Commissioner, Commissioner.

22. [Exemption of petitions under Act from stamp-duty.] Rep. by the Court-fees Act, 1870 (7 of 1870).

23. It shall be lawful for the said Lieutenant-Governor from time Lieutenantto time to make such rules and orders as to him may seem fit for Governor regulating the practice and procedure to be followed in making the rules. inquiries, investigations, demarcations and registers required by this Act, and all reviews thereof and appeals therefrom; and such rules and orders, when published in the Calcutta Gazette, shall have the same force and effect as if the same were a portion of this Act.

24. No judgment, decree or order in any suit instituted after the Effect of passing of this Act shall be evidence in any inquiry before the Special judgment in suits com-Commissioner respecting the tenure upon which any land is held, or menced the rents, services or conditions to which any land is subject.

25. The register of each village, prepared under the provisions of Register to section 5 of this Act shall, when finally revised and corrected in accordand pubance with any decisions and orders of the Special Commissioner and the lished. Commissioner of the division, under this Act, be confirmed by the Commissioner of the division, and such confirmation shall be published forthwith in the Calcutta Gazette.[1]

26. Every register to be prepared under this Act, after publication Register to of the confirmation thereof in pursuance of the section next preceding, be conclusive evidence shall be conclusive evidence of all matters recorded in such register in of matters pursuance of this Act; and, from and after such publication of the recorded confirmation of the register relating to any village, no evidence shall be received that any lands in such village not mentioned in such register are of bhuinharri or of majhahas tenure.

27. This Act shall be called the Chota Nagpur Tenures Act, 1869. Short title.

^[1] For a list of notifications issued under s. 25, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

BENGAL ACT 3 OF 1869.

[THE BENGAL CRUELTY TO ANIMALS (ARREST) ACT, 1869.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. Power to arrest without warrant persons guilty of cruelty.
- 2. Act to apply to Calcutta and suburbs.
- 3. Power to extend Act.

BENGAL ACT 3 OF 1869.

[The Bengal Cruelty to Animals (Arrest) Act, 1869.] [1]

(25th August, 1869.)

An Act to enable Police-officers to arrest without warrant persons guilty of cruelty to Animals.

Whereas it is expedient to enable police-officers in certain places to Preamble. arrest without warrant any person committing, within their view, any offence against Act 1 of 1869[3] passed by the Lieutenant-Governor of Bengal in Council, entitled an Act for the Prevention of Cruelty to Animals: It is enacted as follows:—

- 1. Every Police-officer may arrest without a warrant any person Power to. committing, in his view, any offence against the said Act 1 of 1869. [2] arrest without
- 2. This Act shall apply to the town of Calcutta, as defined in Act warrant 4 of 1866[3] passed by the Lieutenant-Governor of Bengal in Council, guilty of and in the suburbs of the Town of Calcutta, as the same may from time act to to time be defined by any notification to be from time to time published apply to by the said Lieutenant-Governor in pursuance of the provisions of Act Calcutta and 2 of 1866, [4] and save as hereinafter is provided, to such towns and suburbs. suburbs only.

3. It shall be lawful for the Lieutenant-Governor of Bengal, by Power to a notification, [5] to be published in the Calcutta Gazette, to extend this extend Act. Act to any town, suburb, district or tract of country, to be mentioned and defined in such notification; and from and after the publication of such notification this Act shall extend and apply to the town, suburb, district or tract of country therein mentioned and defined.

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. 1-see Vol. I of this Code.

This Act, with Ben. Acts 1 of 1869 and 3 of 1900, may be cited together as the Bengal Cruelty to Animals Acts, 1869 to 1900—see Rengal Act 3 of 1900, s. 3 (2), printed, post, p. 711.

LEGISLATIVE PAPERS .-- For Proceedings in Council, see the Calcutta Gazette,

1859, Supplement, pp. 504, 525 and 542.

LOCAL EXTENT. .. This Act applies to the town and suburbs of Calcutta (see s. 2), and may be extended to any town, suburb, district or tract of country in Bengal

The application of the Act is barred

in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),

in Vol. I of this Code; and in the Sonthal Parganas, by the Sonthal Pargana Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

[2] The Bengal Cruelty to Animals Act, 1869. It is printed, ante, p. 99.
[3] The Calrutta Police Act, 1866. It is printed in the Bengal Code (1913—1915), Vol. II, p. 89.

[4] The Calcutta Sukurban Police Act, 1866. It is printed, ibid, p. 53.

[5] For a list of notifications issued under section 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

BENGAL ACT 7 OF 1869.

(THE BENGAL POLICE ACT, 1869.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. (Repealed.)
- 2. Power to divide the provinces into police districts.
- 3. Power to appoint in districts persons to execute duties of Inspector-General.
- 4. Police establishment in each district to be considered one police force.
- 5. Power to employ police out of district.
- 6. Construction

BENGAL ACT 7 OF 1869.

(THE BENGAL POLICE ACT, 1869.)[1]

(29th September, 1869.)

An Act to amend the constitution of the Police-Force in Bengal.

Whereas it is expedient that the entire police establishment in the Preamble. provinces under the control of the Lieutenant-Governor of Bengal[2] should cease to be one police-force, and that the said provinces should cease to be one general police-district under one Inspector-General; It is enacted as follows:-

- 1. (Repeal of section 2, Act 5 of 1861.) Rep. by the Amending Act, 1903 (1 of 1903).
- 2. It shall be lawful for the Lieutenant-Governor of Bengal, [2] Power to from time to time, to divide the said provinces into as many general divide the police-districts as he may think fit, and from time to time to vary and into policealter any of such general police-districts, or to consolidate two or more districts. of such general police-districts into one district, as he may think fit.

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I -- see Vol. 1 of this Code.

LEGISLATIVE PAPERS.-For Statement of Objects and Reasons, see Calcutta Gazette, 1869, p. 484, and for Proceedings in Council, see ibid, Supplement, 1869, pp. 155, 265, 291, 341 and 645.

LOCAL EXTENT. -This Act was passed for the whole of the former Province of

Bengal--see the title and preamble.

The Act is in force in the Sonthal Parganas—see Vol. IV, Pt. IV of this Code.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Pt. III of this Code, but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

()THER ENACTMENTS.—The General Police Acts in force in Bihar and Orissa are— (1) the Police Act, 1861 (5 of 1861), printed in General Acts, 1834-72, Ed. 1928, p. 114, and

(2) the Police Act, 1888 (3 of 1888), printed in General Acts, 1887-97, Ed. 1928,

For further local enactments relating to the Police, see-

the Cuttack Police Regulation, 1805 (13 of 1805), in Vol. I of this Code.

the Village Chaukidari Act, 1870 (Ben. Act 6 of 1870), post, p. 121.

the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), post, p. 143.

the Chota Nagpur Rural Police Act, 1914 (B. & O. Act 1 of 1914), in Vol. III of this Code.

the Chota Nagpur Rural Police (Amendment) Act, 1926 (B. & O. Act 2 of 1926), in ibid.

[2] This includes the present province of Bihar and Orissa except the district of Sambalpur.

(Secs. 3-6.)

Power to appoint in districts persons to execute duties of Inspector-General.

3. It shall be lawful for the said Lieutenant-Governor, in each such general police-district, to appoint some person to exercise in such district the powers of an Inspector-General of Police, whether such person shall or shall not hold any other office under the said Lieutenant-Governor; and the administration of the police throughout such general police-district, and all powers and authorities by the said Act 5 of 1861[1] or any other Act conferred on an Inspector-General of Police shall be vested in such person.

Police establishdistrict to be considered one police force.

4. The entire police-establishment in every such district shall, for the purposes of the said Act 5 of 1861,[1] be deemed to be one policement in each force, and shall be formally enrolled, and shall consist of such number of officers and men, and shall be constituted in such manner, and the members of such force shall receive such pay, as shall from time to time be ordered by the said Lieutenant-Governor subject to the sanction of the Governor General of India in Council.

Power to employ police out of district.

5. It shall be lawful for the Lieutenant-Governor to employ members of the police-force who have been enrolled in, or appointed to, any one general police-district, in any other general police-district within the provinces subject [in the case of officers of the Indian Police of and above the rank of Assistant Superintendent[2] to his control; and the powers conferred on police-officers by the Code of Criminal Procedure[8] may be by them exercised in any portion of the said provinces without reference to the local limits of the general policedistrict to which they may respectively belong.

Construction.

6. This Act shall be read and taken, in the provinces under the centrol of the Lieutenant-Governor of Bengal,[4] as part of the said Act 5 of 1861.[1]

Sambalpur.

^[1] The Police Act, 1861. It is printed in General Acts, 1834-72, Ed. 1928, p. 114.
[2] These words were inserted by the Devolution Act, 1920 (Act 38 of 1920), s. 2 and First Sch., pt. V, printed in Vol. I of this Code.
[3] Act 25 of 1861 was repealed and re-enacted by Act 10 of 1872, which again was repealed and re-enacted by Act 10 of 1882. The Act of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). This reference should now be taken to be made to the Act of 1898—see s. 3 (1) of that Act.
[4] This includes the present province of Bihar and Orissa except the district of Sambalaur.

BENGAL ACT 6 OF 1870.

(THE VILLAGE CHAUKIDARI ACT, 1870.)

CONTENTS.

PREAMBLE.

SECTION.

- Definitions.
- Repeal of portion of Regulation 20 of 1817.
- 3. Appointment of panchayats.
- 3A. Delegation of powers by the District Magistrate.
 - 4. Power to define a village.
 - 5. Power to appoint panchayat on application of villagers.
 - 6. Succession of member of panchayat.
 - 7. Qualification of members of panchayat.
 - 8. Penalty on refusing to act as member of panchayat.
 - 9. Period for which panchayat to be appointed.
- 9A. Exemption from serving on panchayat.
- 9B. Appointment of fresh panchayat.
- 10. Power to remove members.
- 11. Number of chaukidars to be determined by the District Magistrate.
- 12. The District Magistrate to determine salaries of chaukidars.
- 13. Salaries to be provided by assessment.
- 14. Persons liable to assessment.
- 15. Nature and amount of assessment.
- 16. Time and form of assessment.
- 17. Power to continue former assessment.
- 18. Duration of assessment.
- 19. Power to review assessment.
- 20. District Magistrate may revise assessment.
- 21. Rate payable quarterly in advance.
- 22. Allowance for collecting rate.
- 23. Constitution of chaukidari fund.
- 24. Application of surplus.
- 25. Payment of instalment to be made within seven days.
- 26. List of defaulters to be made out.
- 27. Power to distrain for rates.
- 28. Manner of executing distress.
- 29. Sale in execution of warrant.
- 30. Objections to levy how to be made.
- 31. Custody of property distrained.
- 32. What property may be distrained for rates.
- 33. Distress not to be levied after a year.
- 34. Irregularities not to avoid distraint.
- 35. Appointment and dismissal of chaukidars.
 36, 37. (Repealed.)
 38. Power to fine chaukidars.
 39. Duties of chaukidars.
- - 40. Procedure on arrest by chaukidars.
 41. Control of chaukidars by panchayat.
 42. Fines and penalties to be credited to District Chaukidari Reward Fund.
 43. Mode of paying chaukidars.

 - 44. Panchayat to pay or remit quarterly amounts for payment of chaukidars, etc.

 - 45. Mode of realizing chaukidar's salary.
 46. Re-imbursement of member of panchayat by whom salary is paid.
- Appointment of tahsildar.
 Remuneration of tahsildar.
- 47. Power to revise assessment.

PART II.

Chaukidari Chakaran LANDS.

SECTION.

- 48. Chaukidari chakaran lands to be transferred to zamindars.
- 49. Assessment to be fixed at one-half of value.

50. Collector to make transfer.

51. Effect of transfer.

52. Assessment to be permanent charge on lands.53. Mode of realization.54. Notice of arrear.

55. Mode and effect of sale.

56. Application of proceeds of sale.

57. Right to service from occupier of transferred land to cease.

58. Appointment of commission.

59. Power to refer to commission question relating to chakaran land.

60. Powers of commission.

61. Duties of commission and effect of their order.

PART III.

MISCELLANEOUS PROVISIONS.

62. Powers of the panchayat may be exercised by the District Magistrate.

63. Indemnity clause.

64. Control vested in Commissioner of Circuit.

65. Rules for guidance of panchayat.

66. Duty of zamindars to report crimes not affected.

67. Village watch where panchayat not appointed, not affected. 68. Commencement.

69. Short title.

SCHEDULE A.—Form of Distraining Warrant.

SCHEDULE B.—Offences to be reported and for which a chaukidar may arrest. SCHEDULE C.—Form of Transferring Order.

Schedule D .- Form of Notice of Arrears of Assessment on Land.

BENGAL ACT 6 OF 1870.

(THE VILLAGE CHAUKIDARI ACT, 1870.)[1]

(19th October, 1870.)

An Act to provide for the appointment, dismissal and maintenance of village-chaukidars.

Whereas it is expedient to make provision for the appointment, dis-Preamble. missal and maintenance of village-chaukidars in the provinces subject to the Lieutenant-Governor of Bengal;[2] It is enacted as follows:—

1. The following words and expressions shall, in the construction of Definitions. this Act, have the several meanings hereby assigned to them respectively; except where a different intention shall appear from the context (that is to say):—

the words [3][" District Magistrate"] shall mean the chief officer" District charged with the executive administration of a district in criminal Magistrate." matters by whatsoever designation such officer is called:

Cazette, 1870, page 357; and for Proceedings in Council, see ibid, Supplement, 1870 pp. 53, 179, 305, 333, 349, 365 and 385.

Local Extent.—This Act applies to districts and sub-divisions in Bengal to which it is extended by order under s. 68—see that section, post, p. 137.

The Act has been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3 to be in force in the District of Manbhum and Pargana Dhalbhum in the District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Part III; but its application is borned in—

its application is barred in-

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (5 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, ibid.

The whole of this Act except the preamble and sections 1, 48 to 61 (part II), 66, 67 and 69 and Schedules C and D is repealed by the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), s. 2 (2) and Sch. II, in respect of a union in which part III of the latter Act is in force. For a list of unions to which part III has been extended, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, pt. VII.

EXTENSION OF PROCEDURE—As to the control of the latter and Orders, Vol. I, pt. VII.

EXTENSION OF PROCEDURE. -As to the application of portions of this Act to the recovery of expenses and assessments for sanitary purposes in a union, see the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), ss. 117 and 118C(3), post, pp. 573 and 576.

AMENDING ACTS.—Bengal Acts 1 of 1871, 1 of 1886 and 1 of 1892 are to be read with, and taken as part of, this Act—see Ben. Act 1 of 1871, s. 7 (post, p. 144), Ben. Act 1 of 1886, s. 1 (post, p. 597), and Ben. Act 1 of 1892, s. 1, (post, p. 613).

[2] This includes the present province of Bihar and Orissa, except the district of

Sambalpur.

[3] The words "District Magistrate" were substituted for the words "Magistrate of the District" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act of 1892), s. 2 (2), post, p. 613.

[4] The definition of "Magistrate" was repealed by ibid, s. 2 (1), and is omitted.

^[1] LEGISLATIVE PAPERS. - For Statement of Objects and Reasons, see Calcutta

(Secs. 2-3.)

" Chaukidarichakaran lands."

The words "chaukidari chakaran lands" shall mean lands which may have been assigned, otherwise than under a temporary settlement, for the maintenance of the officer who may have been bound to keep watch in any village and report crime to the police, and in respect to which such officer may be at the time of the passing of this Act liable to render service to a zamindar:

" Zamindar."

the word "zamindar" shall mean the person whose name is registered in the general register of estates paving revenue directly to Government as the proprietor of an estate so paying revenue, or the person whose name is registered in the general register of rent-free tenures as proprietor of a rent-free tenure.

Repeal of portion of Regulation 20 of 1817.

2. Section 21, Regulation 20 of 1817, [1] is hereby repealed [2] as to all villages to which this Act may apply.

Appointment of panchayats. [3]3. The District Magistrate may,—

(1) by an order in writing, appoint not less than three nor more than five residents in any village within the district of which he has charge to be the panchayat thereof; or

(2) he may, with the previous sanction of the Local Government, direct that the adult male rate-paying residents of any village shall select, according to any rules that may be prescribed by the Local Government and published in the Calcutta Gazette, not less than three nor more than five residents of the village to be the panchayat thereof; and the District Magistrate shall, if he approves of the persons so selected appoint such persons to be the panchayat; but if in his opinion, any person so selected is, for reasons to be recorded by him in writing, unfit to be a member of the panchayat, the District Magistrate shall appoint a fit and proper resident to be a member of the panchayat:

Provided that no panchayat shall be appointed in any place to which the Bengal Municipal Act, 1884[4] has been, or may hereafter be, ex-Ben. Act 3 tended:

Provided also that the Local Government shall be entitled to prescribe that in certain specified local areas, to be notified in the Calcutta Gazette, the number of persons to be appointed to discharge the duties of a panchayat may be reduced to one.

^[1] The Bengal Police Regulation, 1817.

^[2] This repeal does not take effect in any village or union until a chaukidar has Chaukidari Act, 1871 (Ben. Act 1 of 1871), s. 1, post, p. 143.

[3] This section was substituted for the former s. 3 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 3, post, p. 613.

[4] Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O.

Act 7 of 1922), printed in Vol. III of this Code.

(Secs. 3A-6.)

- [1]3A. The District Magistrate may from time to time by an order Delegation in writing, with the sanction of the Commissioner, delegate his powers of powers by the under this Act, either wholly or in part, to any Magistrate of the first District class subordinate to him, or to any Magistrate in charge of a sub-divi-Magistrate. sion or to the District Superintendent of Police; and, by a like order, and with the same sanction, may withdraw such delegated powers.
- [2]4. The District Magistrate may, from time to time, by an order Power to in writing under his hand, declare any local area or group of dwellings, village. within the district of which he has charge, to be a village for the purposes of this Act.
- 5. Whenever the majority in number of the adult male residents in Power to any village * * *[3] shall, by a writing signed by them, apply to appoint the [4] [District Magistrate] for the appointment of a punchayat in such on applicavillage * * *,[5] it shall be lawful for him to appoint a panchayat tion of villagers. under this Act in such village * * *[5] without regard to the number of houses therein contained, and all the provisions of this Act shall apply to such panchayat and to such village * *.[5]
- [6]6. Whenever any member of a panchayat shall die or cease to be Succession a member of such panchayat, the [7][District Magistrate] shall, by of member of writing under his hand, call on the remaining members of the panchayat to nominate within thirty days a fit and proper person to be appointed as member of the panchayat in the room of such member so dying or ceasing to be a member, and the [7][District Magistrate] shall, unless he considers such nomination improper, appoint the person so nominated to be a member of the panchayat:

[2] This section was substituted for the original s. 4 by ibid, s. 5, post, p. 614.

The original s. 4 ran as follows :-

[3] The words "or in two or more villages so situate as in s. 4 is set forth"

were repealed by *ibid*, s. 6, and are omitted.

[4] The words "District Magistrate" in s. 5 were substituted for the words "Magistrate of the district" by *ibid*, s. 2 (2), *post*, p. 613.

[5] The words "or villages" in s. 5 were repealed by *ibid*, s. 6, and are omitted.

[6] This section was substituted for the original s. 6 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 3, *post*, p. 597. The original s. 6 ran as follows :-

"6. Whenever any member of a panchayat shall die or cease to be a member of such panchayat, the Magistrate of the district shall, by a sanad under his hand and seal, appoint some other person to be a member of such panchayat in the place or stead of the person so dying or ceasing to be a

[7] The words "District Magistrate" in s. 6 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), post, p. 613.

^[1] S. 3A was inserted by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 4, post, p. 613.

[&]quot;4. If two or more villages containing together not less than eighty houses are so situate that some house in one of such villages is situate within one mile of some house in each of the others, it shall be lawful for the Magistrate to form such villages into a union, and for the purposes of this Act such union shall be deemed to be a village."

(Secs. 7-9A.)

Provided that if no person shall have been so nominated, or if in the opinion of the [¹][District Magistrate] the person reminated is, for reasons to be recorded by him in writing, unfit to be appointed a member of the panchayat, the [¹][District Magistrate] shall appoint a fit and proper person to be a member of the panchayat.

Qualification of members of pan-chayat.

Penalty on

refusing to

member of

panchayat.

7. No person shall be appointed to be a member of a panchayat under this Act unless he be a resident in such village or the proprietor or holder of land therein or his local agent:

Provided that such proprietor or local agent shall not be so appointed unless he be resident within one mile from some part of such village.

8. If any person, appointed to be a member of a panchayat, shall refuse to undertake the office, or wilfully omit to perform the duties thereof, and shall not within [2] [thirty days] from the date of his appointment, or from such omission, show grounds to the satisfaction of the [3] [District Magistrate] for such refusal or omission, he shall be liable to a fine which may extend to fifty rupees:

Provided that every person who shall have paid any fine under the provisions of this section shall thereupon cease to be a member of the panchayat and shall not be liable to be re-appointed a member of panchayat for the space of [4][three years] from the day of the payment of such fine.

Period for which panchayat to be appointed.

[5]9. Every member of a panchayat appointed under section 3 shall be appointed for the term of three years.

Every member of a panchayat appointed under section 6 shall be appointed only for a term equal to the unexpired portion of the term for which the member whom he succeeds was appointed.

Exemption from serving on panchayat.

[6] **9A.** No member of a panchayat, after the expiry of his term of office, shall be again appointed a member of a panchayat, without his consent till after the lapse of three years.

^[1] The words "District Magistrate" in s. 6 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), post, p. 613.

^[2] The words "thirty days" in s. 8 were substituted for the words "fifteen days" by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 4, post, p. 597.

^[3] The words "District Magistrate" in s. 8 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), post, p. 613.

^[4] The words "three years" in s. 8 were substituted for the words "two years" by the Bengal Village Chaukidarı (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 4, post, p. 597.

^[5] This section was substituted for the original s. 9 by ilid, s. 5. The original s. 9 ran as follows:—

[&]quot;9. It shall be lawful for any person who shall have served for the term of two years as a member of any panchayat to retire from such panchayat, and the person so retiring shall not without his own consent be appointed to serve on such panchayat until after the expiry of two years from the date of such his retirement."

^[6] Ss. 9A and 9B were inserted by ibid, s. 6, post, p. 598.

(Secs. 9B-13.)

- [1] **9B.** On the expiry of the term for which the members of a Appoint-panchayat were appointed, the [2] [District Magistrate] shall appoint ment of a new panchayat in the manner prescribed in section 3, the outgoing panchayat. panchayat continuing to exercise all the functions of a panchayat until such new panchayat has been appointed.
- 10. It shall be lawful for the [2][District Magistrate], by an order Power to in writing signed by him, to remove or discharge any member of a members. panchayat.
- [3] 11. The District Magistrate shall determine the number of Number of chaukidars to be employed in a village:

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Provided that, without the sanction of the Commissioner, there shall the District not be more than one *chaukidar* for every sixty houses.

[4]12. The salaries of chankidars appointed shall be determined by The District the District Magistrate:

Magistrate to determined by The District Magistrate

Provided that such salaries shall not be less than two nor more than salaries of six rupees per mensem.

[5]13. The panchayat shall impose an assessment yearly in each Salaries to village equal to the amount required for the pay and equipment of the be provided by assess-chaukidars, together with fifteen per cent. above such amount, in order ment. to provide for payment of the expenses of collection and losses from the non-realization of the rate from defaulters.

^[1] Ss. 9A and 9B were inserted by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 6, post, p. 598.

^[2] The words "District Magistrate" in ss. 9B and 10 were substituted for the words "Magistrate of the District" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), post, p. 613.

^[3] This section was substituted for the original s. 11 by ibid, s. 7, post, p. 614. The original s. 11 ran as follows:—

[&]quot;11. The punchayat shall determine the number of chankidars to be employed in a village:

Provided that there shall be at least two chaukidars appointed in every village in which there are one hundred and fifty houses, and one additional chaukidar for every complete number of one hundred houses beyond such number of one hundred and fifty."

^[4] This section was substituted for the original s. 12 by ibid, s. 8. The original s. 12 ran as follows:

[&]quot;12. The punchayat shall from time to time determine the monthly salaries of the chaukidars to be appointed:

Provided that such salaries shall not be less than three nor more than six rupees per month."

^[5] This section was substituted for the original s. 13 by *ibid*, s. 10. The original s. 15 ran as follows:—

[&]quot;13. The panchayat shall raise in each village, by a yearly assessment, the amount required for the pay of the chawkidars, together with fifteen per cent. above such amount in order to provide for payment of the expenses of collection and losses from the non-realization of the rate from defaulters."

(Secs. 14-20.)

Persons liable to assessment.

[1]14. All owners or occupiers of houses in any village, and any person who has within such village a cutcherry for collecting rents, shall be liable to assessment for the purposes of this Act.

Nature and amount of assessment.

15. The rate to be levied in any village for the purposes of this Act shall be an assessment according to the circumstances and the property to be protected of the persons liable to the same:

Provided that the amount to be assessed on any one person shall not be more than one rupee per mensem, and that all persons who, in the opinion of the panchayat, are too poor to pay half an anna a month shall be altogether exempt from assessment under this Act.

Time and form of assessment.

16. The panchayat shall, two clear months[2] before the first day of the year current in the village, make such assessment upon the several persons liable thereto, and shall enter the same in a list, which shall specify the name of each person liable to be assessed, the trade, business or other description of such person, and the amount payable monthly by such person, and such list shall be by them published in some conspicuous part of the village at least fifteen days before the expiry of the said two months.

Power to continue former assessment. Duration of assessment.

- 17. The panchayat may, instead of making a new assessment, revise or continue the assessment of the current year, and the assessment so revised or continued shall be in like manner published.
- 18. Every assessment so made, revised or continued shall commence and take effect upon the first day of the year current in the village next ensuing the date of publication thereof, and shall remain in force for one year, and until some other assessment properly made or revised under the provisions of this Act shall commence and take effect.

Power to review assessment.

19. Any person dissatisfied with the amount at which he has been assessed may, within one month after any publication of any assessment, apply to the panchayat, either orally or in writing, for a revision of the assessment, and the panchayat may confirm the assessment or amend the same.

District Magistrate may revise assessment.

20. No appeal, as of right, shall lie from any order passed by a panchayat as regards the revision of any assessment; but the [3][District Magistrate may call for the general list of assessment in any village, and shall so call for such list on the application of ten rate-payers in such village, and may pass such orders on any list so called for as he may think proper.

"14. All owners or occupiers of houses in any village, and any zamindar who has within such village a cutchery for collecting rents, shall be liable to assess-

ment for the purposes of this Act."

[2] As to the making of an assessment within one month after the appointment of a panchayat, see the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), ss.

2 to 4, post, p. 143.
[3] The words "District Magistrate" in s. 20 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), post, p. 613.

^[1] This section was substituted for the original s. 14 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 10, post, p. 614. The original s. 14 ran as follows :-

(Secs. 21-28.)

- 21. Every rate to be payable under this Act shall be payable by Rate equal[1][quarterly] instalments; the instalment of rate on account of payable quarterly in each [1] [quarter] shall be due on the first day of such [1] [quarter]. advance.
- 22. Every panchayat shall appoint one of their number to receive Allowance and collect the rate, and to grant receipts for the same and to keep the for collecting accounts thereof, and it shall be lawful for the panchayat to permit the person so appointed to retain any sum not exceeding[2][ten per cent.] of the amount collected by him to repay the costs of such collection.
- 23. The proceeds of every assessment to be levied under this Act in Constituany village, together with any sum which may become applicable to the tion of Chaukidari purposes of this Act, shall constitute a fund, which shall be called the Fund. Chaukidari Fund of such village.
- 24. If, at the end of any year, any surplus of the Fund may remain Application unexpended, such surplus shall be carried to the credit of the Chauki- of surplus. dari Fund for the ensuing year, and the amount to be raised by assessment in such ensuing year may in such case be reduced by the amount of such surplus.
- 25. Every person liable to pay any sum assessed upon him under Payment of this Act shall, within seven days after the day upon which any instal-instalment ment of rate may be payable by him, pay or tender such instalment to within seven the person appointed by the panchayat to receive the same.
- 26. Immediately after the tenth day of each [3] [quarter] the List of panchayat of every village, to which the provisions of this Act extend, defaulters shall prepare a list of the persons who may have failed to pay their to be made out. respective instalments of the rate for such [3] [quarter] showing the amount due from each of such defaulters, and shall publish such list in some conspicuous part of the village.
- 27. The collecting member of the panchayat shall thereupon issue a Power to writing in the form in Schedule A, signed by him, authorizing the distrain for rates. chaukidar, or such other person as may be therein named, to levy, by the distraint and sale of a sufficient portion of the movable property of such defaulters, the amount of their respective arrears, together with sums equal to such arrears respectively by way of penalty.
- 28. The person so authorized shall seize such movable property of Manner of such respective defaulters as he shall deem sufficient, and shall make distress.

^[1] The words "quarterly" and "quarter," in s. 21, were substituted for the words "monthly" and "month," with retrospective effect, by the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), s. 5, post, p. 144.

[2] The words "ten per cent." in s. 22 were substituted for the words "six per cent." by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 7, post, p. 598.

[3] The word "quarter," in s. 26, was substituted for the word "month," with retrospective effect, by the Bengal Village Chaukidari Act, 1871 (Ben. Act 1 of 1871), s. 5 onet p. 144

s. 5, post, p. 144.

(Secs. 29-34.)

an inventory of all movable property so seized, and shall at the same time give notice by beat of drum of the time and place where such movable property shall be sold.

Such time of sale shall be not less than two days, nor more than

five days, from the time of the proclamation thereof.

Sale in warrant.

29. In case any defaulter shall not, within the time specified by such execution of notice, pay the amount of such arrears payable by him, together with an equal amount by way of penalty, the movable property distrained, or such portion of it as may be necessary, shall be sold by public outcry at the place and time specified, and the proceeds shall be applied in discharge of such amount and penalty, and the surplus, if any, shall be returned to the person in possession of the movable property at the time of the seizure.

Objections to levy how to be made.

30. Whenever any person whose name may have been included in any list of defaulters may dispute his liability to pay the amount mentioned in such list or any portion thereof, he may apply to the [1][District Magistrate] either orally or in writing, stating the grounds of his objection, and the [1][District Magistrate] shall examine his objection and pass such order thereon as to him shall seem proper.

Custody of property distrained.

31. Any property distrained under the provisions of section 28 shall remain in the custody of the chaukidar, or of some other person whom the panchayat may appoint in that behalf.

What property may be distrained for rates.

32. All goods and chattels, except plough-cattle and tools and implements of trade or agriculture, found in or upon any house or land occupied by any defaulter, shall be deemed to be his property, and shall be liable to be distrained and sold for the recovery of the arrear.

If the goods and chattels distrained belong to any person other than the defaulter, the defaulter shall be liable to indemnify the owner of such goods and chattels for any damage he may sustain by reason of such distress, or by reason of any payment he may make to avoid such distress or any sale under the same.

Distress not after a year.

33. No arrears of any rate payable under this Act shall be recoverto be levied ed by distress after the expiration of one year from the day on which the same shall have become due.

Irregularities not to avoid distraint.

34. No distress levied by virtue of this Act shall be deemed unlawful, nor shall any party making the same be deemed a trespasser, on account of any defect or want of form in any list, assessment, notice, summons, power, writing, inventory or other proceeding relating thereto, nor shall such party be deemed a trespasser from the commencement on account of any irregularity afterwards committed by him, but all persons aggrieved by such irregularity may recover full satisfaction for

^[1] The words "District Magistrate," in s. 30, were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act I of 1892), s. 2 (2), post, p. 613.

(Secs. 35-39.)

any special damage sustained by them, in any Court of competent jurisdiction, subject to the provisions of section 63 of this Act.

[1] 35. (1) The panchayat shall, when a vacancy exists, nominate a Appointperson to be a chaukidar under this Act, and the District Magis ment and dismissal of trate shall, if satisfied with such nomination, appoint such nominee to chaukidars. be chaukidar:

Provided that if the panchayat fail to nominate within a reasonable time a person to be a chaukidar, or the District Magistrate is not satisfied with such nomination, the District Magistrate shall appoint any person he thinks fit to be a chaukidar.

- (2) The District Magistrate, or the panchayat with the sanction of the District Magistrate, may, from time to time, dismiss any chaukidar so appointed.
- **36, 37.** (Appointment of chaukidars to be registered by police; power of Magistrate to dismiss chaukidars.) Rep. by the Bengal (Amendment) Act, 1892 (Ben. Act 1 of 1892), Village Chaukidari s. 12.
- 38. Every chaukidar who may be guilty of any wilful misconduct Power to in his office, or neglect of his duty, such misconduct or neglect not fine chaukidars. being an offence within the meaning of the Indian Penal Code, and not being of so grave a character as in the opinion of the [2][District Magistrate to require his dismissal from his office, shall be liable to a fine which shall not exceed the amount of one month's salary.

[3] 39. Every chaukidar appointed under the provisions of this Act Duties of chaukidars. shall perform the following duties:-

1st.—he shall give immediate information to the officer in charge of the police-station within the limits of which the village is situate of every unnatural, suspicious or sudden death which may occur, and of any offence specified in Schedule B which may be committed within his village, and he shall further keep the police informed of all disputes which are likely to lead to any riot or serious affray;

2nd.—he shall arrest all proclaimed offenders and any person who in his presence commits any offence specified in

45 of 1860.

^[1] This section was substituted for the original s. 35 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 11, post, p. 614. The original s. 35 ran as follows :-

[&]quot;35. The panchayat shall appoint the persons to be chaukidars under the Act, and may, from time to time, with the sanction of the Magistrate, dismiss any such chaukidars."

^[2] The words "District Magistrate" in s. 38, were substituted for the word "Magistrate" by ibid, s. 2 (2), post, p. 613.

^[3] This section was substituted for the former s. 39 by ibid, s. 13, post, p. 614. 6 L. D.

(Secs. 40-41.)

- Schedule B, and any person against whom a hue-andcry has been raised of his having been concerned in any such offence, whether such offence has been or is being committed within his village or outside of it, and shall, without delay, convey any person so arrested to the said police-station;
- 3rd.—he shall, to the best of his ability, prevent, and may interpose for the purpose of preventing, the commission of any offence specified in the said Schedule;
- 4th.—he shall assist private persons in making such arrests as they may lawfully make, and shall report such arrests without delay to the officer in charge of the said police-station;
- 5th.—he shall observe, and, from time to time, report to the officer aforesaid the movements of all bad characters within his village;
- 6th.—he shall report to the officer in charge of such police-station the arrival of suspicious characters in the neighbourhood;
- 7th.—he shall report to the officer aforesaid, in a form signed by one member of the panchayat, the births and deaths, if any, which have occurred within his village at such intervals as the District Magistrate may determine;
- 8th.—he shall report to the officer aforesaid the death or absence for more than two consecutive months of any member of the panchayat;
- 9th.—he shall supply any local information which the District Magistrate, or any officer of police may require;
- 10th.—he shall obey the orders of the panchayat in regard to keeping watch within his village and other matters connected with his duties as chaukidar;
- 11th.—he shall assist the person collecting the rate in making such collection.

Procedure on arrest by chaukidars.

- **40.** Whenever the *chaukidar* may arrest any person, such *chaukidar* shall forthwith take the person so arrested to the police-station within the limits of which such village is situate:
- Provided that, if the arrest is made at night, such person shall be so taken, as soon as convenient, on the following morning.

Control of chaukidars by panchayat.

41. The panchayat shall exercise a general control over the chaukidars and every member of such panchayat who may know or be informed of the commission within the village of any offence specified in Schedule B of this Act shall forthwith cause the same to be reported by the chaukidar to the officer in charge of the police-station within

(Secs. 42-45.)

the limits of which the village may be situate, and, on failure of the chaukidar, such member shall himself report the same [1] [or cause the same to be reported to such officer.

[2]42. All fines and penalties levied under this Act shall be credited Fines, and to a District Chaukidari Reward Fund, the control over which shall be credited rest with the District Magistrate.

to District Chaukidari Reward Fund.

[8]43. Every chaukidar shall receive, quarter by quarter, the full Mode of amount of his salary from such officer [4][as the Local Government chaukidars. may, by rules made under this Act, prescribe or direct].

[5]44. Within thirty days after the end of each quarter, every Panchayat panchayat shall pay or remit to such officer or person[6] [as the Local to pay or Government may prescribe or direct | under the last foregoing section quarterly a sum equal to the pay of the chaukidar for the quarter, or any smaller amounts for amount which may stand to the credit of the Chaukidari Fund of the chaukidars, village.

45. If it shall appear to the [7][District Magistrate] that there is Mode of no money to the credit of the Village Chunkidari Fund, and that the realizing chankidar's panchayat shall not have taken sufficient steps to realize from ealary. defaulters the arrears due from them, the [7][District Magistrate] [8] [may issue his warrant] for the realization of the chaukidar's pay

^[1] These words in square brackets in s. 41 were inserted by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 9, post, p. 598.

^[2] This section was substituted for the original s. 42 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 14, post, p. 614. The original s. 42 ran as follows:—

[&]quot;42. All fines and penalties levied under this Act shall be carried to the credit of the Village Chaukidari Fund and be applied as a portion thereof."

^[3] This section was substituted for the original s. 43 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 10, post, p. 598. The original s. 43 ran as follows:-

[&]quot;43. Every chaukidar shall receive, month by month, the full amount of his salary from the member of the panchayat appointed to collect the tax.

^[4] These words in square brackets in s. 43 were substituted for the words "or person as the Magistrate shall appoint" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 15, post, p. 614.

^[5] This section was substituted for the original s. 44 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 11, post, p. 598. The original s. 44 ran as follows:—

[&]quot;44. Whenever the salary of any month shall not be paid in full to any chaukidar on or before the 15th of the month following, such chaukidar may apply to the Magistrate, who shall call upon the panchayat within 10 days to show cause why they should not pay the amount due to such chaukidar."

^[6] These words in square brackets in s. 44 were substituted for the words "as the Magistrate may appoint" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 16, post, p. 614.

^[7] The words "District Magistrate," in s. 45, were substituted for the word Magistrate" by ibid, s. 2 (2); post, p. 613.

^[8] The words "may issue his warrant" in s. 45 were substituted for the words "shall issue his warrant" by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben, Act 1 of 1886), s. 12, post, p. 598.

(Secs. 46-46B.)

from the members of the panchayat by distress and sale of their movable property, and shall therein charge some person, therein named, with the execution thereof:

and upon such warrant such proceedings shall be had as hereinbefore directed to be had on any writing issued for the recovery of any arrears of the tax by this Act directed to be levied;

and the amount due to such chaukidar shall be paid to him out of the amount so levied, and the residue thereof, after payment thereout of all costs and expenses incurred in or about the execution of such warrant, shall be paid to the persons from whom such distress shall have been so levied.

[1] [An application for the appointment of a tahsildar under section 46A shall not of itself be deemed a sufficient step to realize from defaulters the arrears due from them.?

46. Any member of a panchayat, from or by whom any sum shall have been levied or paid under the provisions of the section last preceding, shall be reimbursed the amount so levied from or paid by him from any surplus of the Village Chaukidari Fund which may remain at the end of the year in which such sum shall have been so levied or paid.

[2]46A. The District Magistrate may at any time, on the application of the panchayat of any village, or of his own motion if, in his opinion, the collection of the rate is badly carried out, or if the chaukidar is not regularly paid, appoint a tahsildar to assist the person collecting the rate; and such tahsildar shall exercise all the powers vested in the panchayat for the collection of the said rate; and the District Magistrate shall, on a like application, and he may of his own motion, revoke such appointment.

Remuneration of tahsildar.

Reimbursement of

member of

panchayat by whom

salary is

Appoint-

ment of

tahsildars.

paid.

[3]46B. Every tahsildar appointed under the last foregoing section shall be remunerated at such rate and in such manner as the [4][District Magistrate] may, from time to time, with the sanction of the Commissioner of the Division, prescribe; and such remuneration shall be levied from those who have failed to pay their chaukidari assessments in the same manner and in the same proportion as the chaukidari assessment:

[1] This paragraph was added to s. 45 by the Bengal Village Chaukidari (Amendment) Act, 1886 (Ben. Act 1 of 1886), s. 12, post, p. 598.

[2] This section was substituted for the former s. 46A by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 17, post, p. 614. The former section ran as follows:—

"46A. The Magistrate may at any time, on the application of the panchayat of any village, appoint a tahsildar in such village to assist the collecting member of such panchayat, and such tahsildar shall exercise all the powers vested in the panchayat for the collection of the chaukidari assessment, and the Magistrate shall on a like application, revoke such ment, and the Magistrate shall on a like application, revoke such appointment."

[3] S. 46B was inserted by the Bengal Village Chaukidari (Amendment) Act, 1886

(Secs. 47-51.)

Provided that one tahsildar may, in the discretion of the [1][District Magistrate], be appointed for more than one village.

47. If it shall appear to the [¹][District Magistrate] that the defi-Power to ciency of the funds to the credit of the Village Chaukidari Fund has been caused by an erroneous assessment, the [¹][District Magistrate] shall call for the assessment and revise the same as he shall think proper, and shall remit the same to the panchayat, and such panchayat shall forthwith proceed to levy the sums respectively appearing to be due by such revised assessment.

PART II.

Chaukidari Chakaran LANDS.

- **48.** All chaukidari chakaran lands before the passing of this Act Chaukidari. assigned for the benefit of any village in which a panchayat shall be chakaran appointed shall be transferred in manner and subject as hereinafter transferred mentioned to the zamindar of the estate or tenure within which may be to zamindars. situate such lands.
- 49. All lands so transferred shall be subject to an assessment which Assessment shall be fixed at one-half of the annual value of such land according to be fixed to the average rates of letting land similar in quality in the neighbour- of value. hood of such land, and such assessment shall be made by the panchayat of the village.
- **50.** Such assessment when made by the panchayat shall be submit-Collector to ted to the Collector of the district, and he or any other officer exercising make transthe powers of a Collector by him thereunto appointed may approve, or revise and approve, the same (provided that it shall be lawful for the zamindar to contest the assessment before it is so approved), and after such approval the Collector of the district shall, by an order under his hand in the form in Schedule C, transfer to such zamindar such land subject to the assessment so approved.
- 51. Such order shall operate to transfer to such zamindar the land Effect of therein mentioned subject to the amount of assessment therein men-transfer. tioned, and subject to all contracts theretofore made, in respect of,

^[1] The words "District Magistrate" in s. 47 were substituted for the word "Magistrate" by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 2 (2), post, p. 613.

(Secs. 52-56.)

under, or by virtue of which any person other than the *zamindar* may have any right to any land, portion of his estate, or tenure, in the place in which such land may be situate.

Assessment to be a permanent charge on lands. 52. The amount of the assessment mentioned in such order shall be a permanent yearly charge on such land, and shall be payable to the collecting member of the panchayat yearly in advance on the first day of the year current in the village by the person for the time being entitled to recover the rents of such land from the occupier thereof.

Mode of realization.

53. Every such assessment shall be deemed to be a demand to be realized in the manner hereinafter provided.

Notice of arrear.

54. Whenever such assessment shall be in arrear for the space of fifteen days after it shall have become payable, the collecting member of the panchayat shall forward to the Collector of the district in which the land so assessed is situate notice of the amount of such arrear and the name of the person liable to pay such assessment, in the form in Schedule D annexed to this Act.

Mode and effect of sale.

55. Immediately after the receipt of the said notice the Collector or other officer authorized to hold sales under the law for the time being in force for regulating sales of land for arrears of revenue, shall proceed, without any preliminary notice for payment, to issue a notification for sale under section 6 of Act 11 of 1859,[1] passed by the Legislative Council of India;

and, unless the arrears be paid within the time mentioned in such notification, shall sell such land according to the provisions of such law as if such land were an estate within the meaning of Act 7 of 1868[2] passed by the Lieutenant-Governor of Bengal in Council;

and all provisions of the law for the time being in force with respect to the sale of such estates shall apply to the sale of such land, and every such sale shall have such and the same force and effect as if the same were a sale of an estate for arrears of its own revenue, and such land shall be held by the purchaser thereof subject to such assessment, but freed from all other charges and incumbrances save those to which he would have been liable if the said land had been an estate sold for arrears of its own revenue.

Application of proceeds of sale.

56. Such Collector shall, out of the proceeds of such sale, after defraying the costs of and attending such sale, pay to the collecting member of the panchayat, within one week after such sale shall have become final, the amount due for arrears of such assessment, and pay the balance of such proceeds to the person named in the notice from the collecting member of the panchayat as the person liable to pay the assessment of such land.

The Bengal Land-Revenue Sales Act, 1859. It is printed in Vol. I of this Code.
 The Bengal Land-Revenue Sales Act, 1868. It is printed, ante, p. 91.

(Secs. 57-61.)

57. When any lands shall have been transferred to any zamindar Right to under the provisions hereinbefore contained, the right to the performoccupier of ance of any services to any person by the occupier of such lands in transferred respect of his occupation thereof shall wholly cease and determine.

- 58. In any district or part of a district in which may be situated Appointlands before the passing of this Act assigned for the maintenance of ment of an officer to keep watch in any village and to report crime to the police, it shall be lawful for the Lieutenant-Governor of Bengal, by an order[1] to be published in the Calcutta Gazette, to appoint a commission, consisting of one or more persons, to ascertain and determine the chuukidari chakaran lands and other lands before the passing of this Act assigned for the maintenance of an officer to keep watch in any village and to report crime to the police in such district.
- 59. Whenever in any district in which such commission shall have Power to been appointed, any question shall arise whether any or what lands refer to are chaukidari chakaran lands or other lands before the passing of this commission question Act assigned for the maintenance of an officer to keep watch in any relating to village and to report crime to the police, it shall be lawful for such land. commission to inquire into such question.
- 60. In inquiring into such question the commission shall, as far Powers of as may be necessary for the purposes of this Act, exercise all such and commission. the same powers as are conferred by Regulation 7 of 1822[2] and the Regulations and Acts amending the same upon a Collector making a settlement of land-revenue.
- 61. Such commission shall demarcate the boundaries of any lands Duties of which they may determine to be chaukidari chakaran lands or other commission and effect of lands before the passing of this Act assigned for the maintenance of an their order. officer to keep watch in any village and to report crime to the police, and shall make orders under their hand setting forth the land which they shall have determined to be chaukidari chakaran lands or other lands as aforesaid, and the boundaries thereof, and the name of the village for the benefit of which such lands are assigned, and distinguishing whether such lands be or be not chaukidari chakaran lands or other lands as aforesaid.

Every such order shall be final and conclusive respecting all matters hereinbefore required to be set forth in such order so far as the same shall be therein set forth.

[1] For a list of orders made under section 58, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.
[2] The Bengal Land-revenue Settlement Regulation, 1822. It is printed in Vol. I of this Code.

(Secs. 62-64.)

PART III.

MISCELLANEOUS PROVISIONS.

Powers of the panchayat may be exercised by the District Magistrate.

[1]62. All powers vested in the panchayat for the nomination and dismissal of chaukidars and for making the assessments hereinbefore directed to be made may, in case the panchayat, after a notice in writing from the District Magistrate to exercise such powers, or any of them, refuse or, after the lapse of a reasonable time in that behalf, neglect forthwith to exercise the same, be exercised by the District Magistrate.

Indemnity clause.

63. No action shall be brought against the [2][District Magistrate], nor against any panchayat, nor against any member thereof, nor against any of his or their officers, nor against any person acting under his or their direction,

for anything done or professing or purporting to be done under this Act.

until the expiration of one month next after notice in writing shall have been delivered or left at the office of the [2][District Magistrate] and at the place of abode of such person, explicitly stating the cause of action, and the name and place of abode of the intended plaintiff;

and, unless such notice be proved, the court shall find for the defendant;

and every such action shall be commenced within three months next after the accrual of the cause of action, and not afterwards;

and, if any person to whom any such notice of action is given shall before action brought tender sufficient amends to the plaintiff, such plaintiff shall not recover.

Control vested in Commissioner of Circuit. **64.** The Commissioner of Circuit shall have a general controlling power over all proceedings of panchayats * * *[3] and [4] [District Magistrates] under this Act.

[1] This section was substituted for the original s. 62 by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 18, post, p. 614. The original s. 62 ran as follows:—

[&]quot;62. All powers vested in the panchayat for the appointment and dismissal of chaukidars, and for fixing the number of chaukidars to be appointed, and the rate of their pay, and for making and levying the assessments hereinbefore directed to be made, may be exercised by the Magistrate or any person whom the Magistrate may, by any writing under his hand, authorize in that behalf, in case the panchayat shall, for fifteen days after a notice from the Magistrate to exercise such powers or any of them, refuse or neglect to exercise the same."

^[2] The words "District Magistrate," in s. 63, were substituted for the word "Magistrate" by ibid, s. 2(g), post, p. 613.

^[3] The words "and Magistrates," which were repealed by ibid, s. 2 (3), are omitted.

^[4] The words "District Magistrates" in s. 64 were substituted for the words "Magistrates of districts" by *ibid*, s. 2 (3).

(Secs. 65-69. Schedule A.)

65. The Lieutenant-Governor of Bengal may, from time to time, Rules for frame rules [1] for the guidance of the panchayats, for regulating the panchayat. practice and procedure of any commission in trying or determining any question referred to them, and for any other purposes connected with this Act, and may, from time to time, alter, vary, or revoke the same, and shall publish every such rule or alteration, variation or revocation of a rule in the Calcutta Gazette; and the rules for the time being in force shall, from their publication, have such and the same force and effect as if they were herein enacted.

66. Nothing in this Act contained shall diminish or in any way Duty of affect any liability, duty or obligation of any zamindar, under any law to report in force at the time of the passing of this Act to report crimes or offences crimes, not occurring within his estate or tenure.

67. Nothing in the Act contained, save the provisions of sections 58, Village 59, 60 and 61, shall affect any lands before the passing of this Act watch where assigned for the maintenance, in any village in which a panchayat may panchayat not be appointed, of an officer to keep watch in such village and to not appoint report crime to the police, and every such officer in such village shall affected. be bound to perform the same duties, and shall have the same rights unto such lands, and may be removed and a successor to him appointed, as if this Act had not been passed.

68. This Act shall commence and take effect in those districts or Commencesub-divisions of districts in the provinces subject to the Lieutenant- ment. Governor of Bengal[2] to which the said Lieutenant-Governor shall extend it by an order[8] published in the Calcutta Gazette; and thereupon this Act shall commence and take effect in the districts and subdivisions of districts named in such order, on the day which shall be in such order provided for the commencement thereof.

69. This Act may be called the Village Chaukidari Act, 1870.

Short title.

SCHEDULE A.

(Referred to in section 27.)

Form of Distraining Warrant.

ACT 6 OF 1870.

VILLAGE Chaukidari FUND.

On behalf of the panchayat of (). Whereas the several persons named in the list at foot hereof have made default in payment

[2] This includes the present province of Bihar and Orissa except the district of Sambalpur.

[8] For a list of orders made under s. 68, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[1] For lists of rules made under s. 65, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Schedules B and C.)

to the said panchayat of the sums in the said list set opposite to their respective names, you are hereby authorized and required to levy by distress and sale of a sufficient portion of the movable property of the said defaulters the said several sums set opposite to their respective names together with the additional sums by way of penalty respectively, equal to the sums set forth. Dated day of

(Sd.) R. B., Collecting member.

Name and description.	Amount.	When due.	Penalty.
B. G.	1-0	1 Baisakh	1-0
K. B.	0-2	1,,	0-2

[1]SCHEDULE B.

(Referred to in sections 39 and 41.)

Offences to be reported and for which a chaukidar may arrest.

Murder, culpable homicide, rape (when the offender is not the husband of the woman raped), dacoity, robbery, theft, mischief by fire, house-breaking, counterfeiting coins, causing grievous hurt, riot, administering stupefying drugs, kidnapping, and all attempts and preparations to commit, and abetiments of the said offences.

SCHEDULE C.

(Referred to in section 50.)

Form of Transferring Order.

District of

Collector of do by this order under my hand made in pursuance of Act 6 of 1870, passed by the Lieutenant-Governor of Bengal in Council, transfer to , zamindar of , the chaukidari chakaran lands of the village of , in the said bounded and containing bighas cottahs; to hold unto the said his heirs and assigns subject to the annual assessment of rupees payable under the provisions of the said Act to the Chaukidari Fund of the said village and also subject to all contracts binding the said in respect of any lands, portion of situated within the said village. the said The day of 18

(Sd.) J. S., Collector of

^[1] This Schedule was substituted for the original Schedule B by the Bengal Village Chaukidari (Amendment) Act, 1892 (Ben. Act 1 of 1892), s. 19, post, p. 614.

(Schedule D.)

SCHEDULE D.

(Referred to in section 54.)

Form of Notice of Arrears of Assessment on Land. Panchayat of

To A. B., Esq., Collector of Sir,

I hereby notify to you that the sum of Rs. being for one year's assessment payable in respect of the chaukidari chakaran lands of this village transferred to the zamindar of became due on the day of and that the same is still unpaid, and that of is the person liable to pay such assessment.

The day of

(Sd.) E. F.,

Collecting Member of Panchayat.

BENGAL ACT 1 OF 1871.

(THE BENGAL VILLAGE CHAUKIDARI ACT, 1871.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Act not to apply till chaukidar appointed.
- 2. Panchayat in certain cases to make assessment within one mouth
- 3. Assessment to take effect within fifteen days.
- 4. Effect of assessment.
- 5. Rate payable quarterly instead of monthly.
- 6. (Repealed).
- 7. Construction.

BENGAL ACT 1 OF 1871.

(THE BENGAL VILLAGE CHAUKIDARI ACT, 1871.)[1]

(25th January, 1871.)

An Act to amend the Village Chaukidari Act, 1870. [2]

Ben. Act 6 of 1870.

Whereas it is expedient to amend the provisions of the Village Preamble. Chaukidari Act, 1870[2]; It is enacted as follows:—

- 1. Nothing in the said Act shall be held to repeal the provision of Act not to section 21, Regulation 20 of 1817,[8] in any village or union until a apply till chaukidar chaukidar shall have been appointed therein under the provisions of appointed. the said Act.
- 2. Whenever a panchayat shall have been appointed in any village, Panchayat the Magistrate may direct that such panchayat shall, within one month in certain cases to after their appointment, make an assessment for the residue of the year make according to the year current in the village upon the persons liable to assessment within one the payment of the chaukidari rate in such village, and shall enter the month. same in a list containing the particulars required to be set forth in the list mentioned in section 16 of the said Act.

Such list shall, on its completion, he forthwith published in some conspicuous part of the said village.

3. Every assessment so made shall commence and take effect upon Commencement of the expiration of fifteen days from the publication of such list. assessment.

4. Every such assessment shall be deemed to be an assessment made Effect of in pursuance of the provisions of the said Act, and the amounts thereby assessment. assessed may be collected and enforced accordingly.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. 1—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1870, p. 2316; and for Proceedings in Council, see ibid, Supplement, 1870, pp. 777, 790, 837; ibid, Supplement, 1871, p. 27.

LOCAL EXTENT.—This Act is to be read with, and as part of, the Village Chaukidari Act, 1870, (Ben. Act 6 of 1870)—see s. 7, ante, p. 124.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the District of Manbhum and Pargana Dhalbhum in the District of Singhbhum, in the Chota Nagpur Division—see Vol. IV, Part III, but its application is barred in-

the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),

in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1012 to 01
1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Low
Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

The whole of this Act is repealed by the Bihar and Orissa Village Administration
Act, 1922 (B. & O. Act 3 of 1922), s. 2 (2), Sch. II in respect of a union in which
Part III of the latter Act is in force. For a list of unions to which Part III has been extended, see the Bihar and Orissa Statutory Rules and Orders, Vol. I, Pt. VI.

[2] Printed ante, p. 121.

[5] The Bengal Police Regulation, 1817.

144 The Bengal Village Chaukidari Act, 1871. [Ben. Act 1 of 1871.]

(Secs. 5-7.)

Rate payable quarterly instead of monthly.

- 5. In section 21 of the said Act 6 of 1870,[1] the word "quarterly" shall be substituted for the word "monthly," and in sections 21 and 26 the word "quarter" shall be substituted for the word "month" wherever such word occurs in the said sections; and the said sections shall be read and construed as if the words hereby directed to be substituted had been originally inserted in place of the words for which they are hereby respectively directed to be substituted.
- 6. (New clause substituted in section 39 of Ben. Act 6 of 1870.) Rep. by the Amending Act, 1897 (5 of 1897).

Construc-

7. This Act shall be read with, and as part of, the said Act 6 of 1870.

^[1] The Village Chaukidari Act, 1870. It is printed, ante, p. 121.

BENGAL ACT 2 OF 1871.

[THE BENGAL LAND-REVENUE SALES (AMENDMENT) ACT, 1871]

CONTENTS.

PREAMBLE.

Construction of Act.

BENGAL ACT 2 OF 1871.

[THE BENGAL LAND-REVENUE SALES (AMENDMENT) ACT, 1871.][1]
(25th January, 1871.)

An Act to amend the Procedure for the recovery of arrears of landrevenue in respect of tenures not being estates.

Whereas it is expedient to amend the procedure for the recovery of Preamble. arrears of land revenue in respect of tenures not being estates; It is enacted as follows:—

Act 7 of 1868, passed by the Lieutenant-Governor of Bengal in Construction of Act. Council, shall be read and construed as if in place of section 11 thereof the following section were inserted and substituted:—

11. (Printed ante, p. 94.)

The Act is in force in the Sonthal Parganas—see Vol. IV, Pt. IV; but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (3), in Vol. I of this Code.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette. 1870, p. 2457; and for Proceedings in Council, see *ibid*, Supplement, 1870, pp. 777 and 836; *ibid*, Supplement, 1871, p. 30.

BENGAL ACT 1 OF 1873.

(THE BENGAL SALT ACT, 1873.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Powers of Magistrate under the Salt Act, 1864.
- 2. Offences under said Act to be tried by whom.
- 3. References in the said Act to Calcutta Police Act.

BENGAL ACT 1 OF 1873.

(THE BENGAL SALT ACT, 1873.)[1]

(12th March, 1873.)

An Act to amend the Salt Act, 1864. [2]

Whereas by the Salt Act, 1864, being Bengal Act 7 of 1864, [2] Preamble. section 3, it is enacted that the word "Magistrate" means any person exercising the full powers of a Magistrate under the Code of Criminal Procedure, Act 25 of 1861; and whereas the said Act 25 of 1861 has been repealed by the Code of Criminal Procedure, Act 10 of 1872, [3] by which later enactment new rules have been enacted, assigning the several powers of Magistrates of the first, second and third classes;

And whereas reference is made in the Salt Act, 1864, [2] to Act 13 of 1856 (for regulating the Police of the Town of Calcutta, etc.) and Act 48 of 1860 (to amend Act 13 of 1856), which enactments have been repealed, so far as they relate to the town of Calcutta, by the Calcutta Police Act, 1866, being Bengal Act 4 of 1866:

It is hereby enacted as follows:—

Ben. Act 7 1. All the powers which, under the provisions of the Salt Act, Powers of 1864,[2] may be exercised by a Magistrate, may be exercised by a Magistrate under Salt of 1864. Magistrate of the first or second class, subject to the provisions of section Act, 1864. 10 of 1872. 20 of the Code of Criminal Procedure.[8]

LEGISLATIVE PAPERS.—For Proceedings in Council, see Calcutta Gazette, Supplement,

in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, Vol. I of this Code. [2] Printed, ante, p. 27.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I-see Vol. I of this Code.

^{1873,} pp. 68, 114, 196 and 239.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Pt. III, but its application is barred in—the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),

^[3] Act 10 of 1872 was repealed and re-enacted by the Code of Criminal Procedure, 1882 (10 of 1882), which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898). The reference to section 20 should now be taken to be made to the corresponding provisions of the latter Act—see s. 3 (1), thereof.

(Secs. 2-3.)

Trial of offences under said Act. 2. All offences punishable under the provisions of the Salt Act, Ben. Act 7 1864,[1] may be inquired into and tried by a Magistrate of the first or of 1864. second class.

References in said Act to Calcutta Police Act.

3. All references made to the said Act 13 of 1856 and the said Act 48 of 1860, in the Salt Act, 1864,[1] shall be taken to be made to the of 1866. Calcutta Police Act, 1866.[2]

^[1] Printed, ante, p. 27.

^[2] Printed in the Bengal Code (1913-15), Vol. II, p. 89.

BENGAL ACT 4 OF 1873.

(THE BENGAL BIRTHS AND DEATHS REGISTRATION ACT, 1873.)

CONTENTS.

PREAMBLE.

SECTION.

- The Lieutenant-Governor may direct that all births, or deaths or births and deaths shall be registered in any area, and may define limits of such area.
- Magistrate may divide area into districts, and may appoint registrars.
 Magistrate to publish list of registrars.
- 3. Every registrar to have an office within his district.
- 4. Commissioners to have register-books prepared and numbered.
- 5. Registrar to inform himself of, and register, births and deaths.
- Chaukidar to obtain particulars and to report to registrar.
 Penalty for neglect.
- Persons bound to give information of birth. Penalty for neglect.
- 8. Persons bound to give information of death. Penalty for neglect.
- 9. Penalty for registrar refusing to register.
- 10. Penalty for wilfully giving false information.
- 11. Municipality under Ben. Act 3 of 1864 may arrange for keeping register of births or deaths or both.
- 12. Magistrate may depute subordinate Magistrate to discharge his functions.

BENGAL ACT 4 OF 1873.

(THE BENGAL BIRTHS AND DEATHS REGISTRATION ACT, 1873.)[1] (2nd July, 1873.)

An Act for Registering Births and Deaths.

Whereas it is expedient to provide the means for a complete register Preamble. of births and deaths; It is hereby enacted as follows:-

1. The Lieutenant-Governor may at any time, by a notification[2] The Lieutenantpublished in the Calcutta Gazette, direct that all births and deaths, or Governor all births, or all deaths, occurring within the limits of any area after a may direct certain date to be named in such notification shall be registered, and births, or for that purpose may define the limits of such area.

deaths or births and deaths shall any area,

define

limits of

such area.

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of be registered in 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, and may 1873, Pt. IV, p. 370; and for Proceedings in Council, see ibid, Supplement, 1873, pp. 538, 562 and 691.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan and the estate of Porahat in the

District of Singhbhum in the Chota Nagpur Division—see Vol. IV, Pt. III.

It extends to the Sonthal Parganas—see Vol. IV, Pt. IV; but its application is barred in the District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS .- As to the registration of births and deaths, under the present Act, in Municipalities, see the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), Ch. XI, in Vol. III of this Code.

As to the registration of births and deaths under the Bihar and Orissa Local Self-Government Act, 1885 (Ben. Act 3 of 1885), see s. 114 of that Act, post, p. 572.

As to the registration of births and deaths under the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), see s. 41 (h) of that Act, in Vol. III of this Code.

As to reports by village chankidars of births and deaths, see the Village Chankidari Act, 1870 (Ben. Act 6 of 1870), s. 39, cl. 7th, ante, p. 130, and the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), s. 27 (1) (viii), in Vol. III of this Code.

As to the registration of hirths and deaths in Cantonments, see the Cantonments Act, 1924 (2 of 1924), ss. 116 (k) and 282 (I) in General Acts, 1924-27, Ed. 1928, p. 116.

As to the voluntary registration of hirths and deaths, see the Births, Deaths and

Marriages Registration Act, 1886 (6 of 1886), in General Acts, 1873-86, Ed. 1928, p. 486.
As to the transmission to the Registrar-General of Births and Deaths in England of registers of, or documents showing, births and deaths of officers and soldiers and their families abroad, see the Registration of Births, Deaths and Marriages (Army) Act, 1879 (42 & 43 Vict., c. 8), in the Collection of Statutes relating to India, Vol. I, Ed. 1913,

As to the duties of Registrars of Births in connection with the vaccination of children, see the Bengal Vaccination Act, 1880 (Ben. Act 5 of 1880), ss. 18 to 24, post, pp. 318 to 320.

[2] For a list of notifications issued under section 1, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 2-6.)

From and after such date this Act shall apply to the whole of the area so defined.

Magistrate may divide area into may appoint registrars.

2. The Magistrate of the district[1] may, for the purpose of such registration, divide any such area into such and so many districts as he districts, and may think fit, and may appoint one or more persons to be registrars of births or of deaths, or of births and deaths, within such district, and may at any time for sufficient reasons dismiss any such registrar, and may fill up any vacancy in the office of registrar.

Magistrate to publish list of registrars.

The Magistrate shall cause to be published a list containing the name and place of office of every registrar in the area, and specifying the hours of the day during which such registrar shall attend at his office for the purpose of registration.

Every registrar to have an office within his district.

3. Every registrar shall have an office within the district of which he is appointed registrar, and shall cause his name, with the addition of registrar of births (or of deaths, or of births and deaths, according to his appointment) for the district for which he is so appointed, and notice of the hours during which he will attend for the purpose of registration, to be affixed in some conspicuous place on or near the outer door of his office.

Commissioners to have registerbooks prepared and numbered.

4. The Magistrate shall cause to be prepared a sufficient number of register-books for making entries of all births or deaths or both, according to such forms as the Lieutenant-Governor may from time to time sanction; and the pages of such books shall be numbered progressively from the beginning to the end; and every place of entry shall be also numbered progressively from the beginning to the end of the book, and every entry shall be divided from the following entry by a line.

Registrar to inform himself of, and register, births and deaths.

5. Every registrar shall inform himself carefully of every birth, or of every death, or of both, according to his appointment, which shall happen in his district, and shall register, as soon as conveniently may be after the event, without fee or reward, the particulars required to be registered, according to the forms mentioned in the last preceding section, touching every such birth or every such death, as the case may be, which shall not have been already registered.

Chaukidar to obtain particulars and to report to registrar.

6. Every chaukidar or other village-watchman in any area to which this Act shall apply, or, where there is no chaukidar or other villagewatchman, such person as the Magistrate may appoint, shall be required to report every birth or death occurring within his beat to such registrar and at such periods as the Magistrate may direct.

He shall obtain in writing, if possible, and if it is impossible for him to obtain in writing, he shall obtain verbally, from any person who is bound to give information of the birth or death all particulars which

^[1] Now District Magistrate—see the Code of Criminal Procedure, 1898 (5 of 1898), s. 3 (2).

SECTION.

- 21. Power for the acquisition of land.
- 22. Lieutenant-Governor may order scheme to be carried out.
- 23. Power to Lieutenant-Governor to modify scheme.
- 24. (1) Claims to compensation for damage caused in carrying out scheme or works. Compensation to be assessed by the Commissioners. Reference to Civil Court if amount assessed be not accepted.
 - (2) Reference to Civil Court where amount of compensation agreed to or settled by Court, but dispute as to its apportionment.
 - (3) Reference may in certain cases be transferred to Subordinate Judge or Munsit for disposal.

PART III.

EXPENDITURE AND APPORTIONMENT

- 25. Cost of compensation, etc., to be deemed part of expense of construction. Such expense may be defrayed by advances from the public funds.
- 26. Interest to be charged on such advances.
- 26A. Rate of interest, and barring of compound interest.
- 27. Reports to be made and expenditure certified.
- 28. (1) Commissioners upon expiry of three years from completion report to classify lands benefited by the works, distinguishing between improved lands and reclaimed lands.
 - (2) Cost of construction with interest to be apportioned upon the improved lands and reclaimed lands.
- Amount payable for the improved lands not to exceed value of improvement.
- 29. (Repealed.) 30. When the land is part of a tenure, etc., Commissioners may declare who shall be deemed liable as landholders.
- 31. Amounts made payable to be a charge upon the improved lands and reclaimed lands respectively. Secretary of State for India in Council to have a perpetual lien for their recovery.
- 32. Commissioners to report apportionment. 33. In default of Commissioners, officer appointed by Lieutenant-Governor to make apportionment and report.
- 34. Reports to be published.
- 35. Appeal against apportionment. 36. Final determination of apportionment.
- 36 A. Power to add to, or alter, declaration as to names of persons liable to pay.

PART IV.

RECOVERY OF SUMS DUE TO THE COLLECTOR.

- 37. Collector to serve notice of apportionment, requiring payment or engagement to pay.
- 38. If amount not discharged, the Collector may recover it as a public demand. 39. Collector may also, with sanction of Board of Revenue, raise unpaid amount by
- leasing or mortgaging the improved or reclaimed lands. 40. Recovery of unrealized portion of charge.
- 41. Power to repay advances.

PART IV-A.

RECOVERY OF SHARE OF PAYMENTS FROM CO-SHARERS.

41A. Power to recover share of payments from co-sharers.

PART V.

RECOVERY BY LANDHOLDERS OR SUPERIOR TENANTS OF THE COSTS OF THE WORKS FROM PERSONS HOLDING LAND UNDER THEM.

- 32. Proprietor may recover from subordinate tenants.
- 43. Recovery by superior tenant.

SECTION.

- 44. (1) Mode and time of payment.
 - (2) Provision in case of dispute as to the amount to be paid.
- (3) Collector to decide objection.
- 44A. Recovery, under the certificate procedure, of payments made in respect of land held by tenants.
- 44B. Bar to recovery of money from tenants in certain cases.
- 45. Proviso.

PART VI.

MISCELLANEOUS.

- 46. Drainage works to be subject to the laws relating to embankments.
- 47. Lands and works to be vested in Collector on behalf of Secretary of State.
- 48. (1) Cost of maintenance of works.

 - (2) Recovery of items omitted from apportionment.
 (3) Surplus profits from property vested in Collector under section 47 to be appropriated to payment of debt to Government.
 (4) Cost of maintenance may be capitalized, and the capitalized amount levied.
- 49. Powers for taking evidence.
- 50. Rent-free lands may be deemed subordinate tenures.
 51. Sum payable by holder of rent-free land to be payable in two instalments.
 51.A. Recovery, under the certificate procedure, of payments made in respect of land held free of rent or revenue.
- 51B. Further provisions as to applications under section 41A, 44A or 51A.
- 51C. Grant of certificate, and effect thereof.
- 51D. Power of Collector to suspend recovery of dues in case of failure of crops.
- 51E. Bar to jurisdiction of Courts in respect of order of suspension.
 51F. Procedure when landholder or tenant collects dues during period of suspension
- 51G. Extension of period for payment of instalments when order of suspension made. 51H. Extension of period of limitation when order of suspension made.
- 51J. Interest not to accrue during period of suspension.
- 52. Service of notices.
- 53. Proceedings not to be invalidated by formal errors.
- 54. Portion of scheme may be deemed separate scheme.
- 55. Lieutenant-Governor may empower other person to act for Collector.
 56. Collector may delegate authority.
- 57. Control of Commissioner.
- 58. Power to make, alter and cancel rules.
- Publication of rules.

PART VII.

Special Provisions for works carried out under Bengal Act 5 of 1871.

- 59. Portions of this Act applicable to works carried out under Bengal Act 5 of 1871. 60 to 63. (Repealed.)
- SCHEDULE A. SCHEDULE B.

BENGAL ACT 6 OF 1880.

(THE BENGAL DRAINAGE ACT, 1880.)[1]

(9th June, 1880.)

An Act to provide for the drainage and improvement of lands.

Whereas it is expedient that provision should be made for the better Preamble. drainage and improvement of lands in the territories administered by the Lieutenant-Governor of Bengal; [2] It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called the Bengal Drainage Act, 1880: Short title. It extends to all the territories for the time being under the Extent. administration of the Lieutenant-Governor of Bengal. [2]

(Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).

2. Bengal Act 5 of 1871 (the Hooghly and Burdwan Drainage Act) Repeal of shall be repealed on and from the date upon which this Act comes into 5 of 1871. force; but, subject to the provisions of this Act, this repeal shall not affect the past operation of such Act, or anything duly done or suffered, or any right, privilege, obligation or liability acquired, accrued or incurred thereunder.

3. In this Act, unless there be something repugnant in the subject Interpretation context,—

"the Collector" means the officer in charge of the revenue "The jurisdiction of the district within which the lands which form the subject Collector." of a scheme under this Act, or the greater portion of such lands, are

1448; *ibid*, 1880, Supplement, pp. 285, 394 and 409.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—see s. 1.

It is in force in the Sonthal Parganas—see Vol. IV, Pt. IV; but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS.—As to the drainage of rural areas, see also the Bengal Irrigation Act, 1876 (Ben. Act 3 of 1876), ante, p. 205 and the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895), post, p. 631.

The Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), does not apply to any

The Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), does not apply to any embankment, land or water-course which is under the operation of Bengal Act 6 of 1880—see Bengal Act 2 of 1882, s. 91, post, p. 483.

[2] This includes the present province of Bihar and Orissa except the district of Sambalpur.

^[1] Legislative Papers.—For Statement of Objects and Reasons, see Calcutta Gazette, 1879, Pt. IV, p. 64: for Report of Select Committee, see *ibid*, 1880, Pt. IV, p. 100; and for Proceedings in Council, see *ibid*, 1879, Supplement, pp. 331, 391 and 1448: *ibid*, 1880, Supplement, pp. 285, 394 and 409

337

(Sec. 3.)

situate. If any doubt arises as to whether the greater portion of the lands is situate within one or two or more districts, the Board of Revenue[1] shall decide the point, and such decision shall be final:

" Certificate officer."

[2]" Certificate officer" means a Certificate officer as defined in clause (2) of section 4 of the Public Demands Recovery Act, 1895: [3] Ben. Act 1 of 1895.

"the Commissioners" means the Drainage Commissioners to be

"The Commissioners.'

appointed under this Act:

"Estate."

"estate" means land included under one entry in the general registers of revenue-paving lands and revenue-free lands, prepared and maintained under the law[4] for the time being in force by any Collector of a district, or a share of, or interest in, such land:

" Proprietor.'

' proprietor ' means a person who as owner is solely or jointly in possession of an estate:

" Tenure."

"tenure" means-

- (1) a permanent rent-paying interest in land, immediately subordinate to that of a proprietor and superior to that of a raiyat, extending to not less than one hundred standard bighas, affected or to be affected by any works under this Act:
- (2) a permanent revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists no rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest:

" Undertenure.'

"under-tenure" means-

- (1) a permanent rent-paying interest in land subordinate to that of a tenure-holder and superior to that of a raiyat, extending to not less than one hundred standard bighas, affected or to be affected by any works under this Act;
- (2) a revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists a rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest:

[4] See the Land Registration Act, 1876 (Ben. Act 7 of 1876), ante, p. 237.

(Sec. 4.)

Explanation .- The term "permanent" is used with reference to the tenure or under-tenure itself, and not with reference to the person who happens to hold such tenure or under-tenure for the time being. A tenure or under-tenure is none the less permanent, although held by a Hindu widow, a Sebait or a person subject to the

The Bengal Drainage Act, 1880.

"landholder" and "holder of land" mean-(1) any person who as owner of an estate is solely or jointly in and "holder"

possession thereof;

6 of 1880.7

of land."

(2) any person who as owner of a tenure or under-tenure is solely or jointly in possession thereof:

where two or more persons are joint landholders, they shall be jointly and severally liable under this Act, except as is otherwise expressly provided herein:

" reclaimed land " means land which was unfit for cultivation before " Reclaimed the execution of any work under this Act, but which has been rendered land." productive by such works:

"improved land" means land which was more or less fit for "Improved cultivation before the execution of any works under this Act, but of land. which the productive powers have been increased by such works:

"Part" and "section" mean, respectively, a Part and section of "Part" this Act. " section."

PART T.

APPOINTMENT OF COMMISSIONERS AND CONDUCT OF BUSINESS.

4. Whenever it appears expedient to the Lieutenant-Governor to Lieutenantcarry out any scheme and plans for the drainage and improvement of to appoint any tract of land, the Lieutenant-Governor may appoint [1] any number Commisof persons, not less than seven, of whom the majority shall be qualified by being holders of lands to be affected by the works mentioned in the said scheme and plans, or managers on behalf of such holders, to be Drainage Commissioners for carrying out the provisions of this Act:

and the Lieutenant-Governor may, from time to time, remove or accept the resignation of any such Commissioner, or may add to the number of the Commissioners, and may appoint another person in the place of any such Commissioner dying, resigning, being removed or ceasing to reside in the district in which such lands are situate, but so as that the majority of the Commissioners shall always be persons qualified as aforesaid.

No act done or proceeding taken by the Commissioners shall be invalid merely on the ground that at the time of doing such act or of

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913). in Vol. III of this Code.

^[2] This definition of "Certificate officer" was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 2, post, p. 715.
[3] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa

Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to cl. (3) of s. 3 of the latter Act—see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, in Vol. III

^[1] For a list of appointments made under s. 4, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

⁶ L. D.

6 of 1880.7

(Secs. 5-9.)

taking such proceeding the majority of the Commissioners were not persons qualified as aforesaid.

Lieutenant. Governor to appoint Chairman.

5. The Lieutenant-Governor shall from time to time appoint[1] one of the persons so appointed Commissioners as aforesaid to be Chairman of the Commissioners, and may at any time, if he see fit, revoke such appointment and appoint another of such persons to be Chairman.

Commissioners may sue and be sued in his name. Meetings of Commissioners and quorum.

The Commissioners may sue and be sued in the name of their Chairman.

6. The Commissioners shall ordinarily meet for the transaction of business once at least in every quarter.

Such meeting shall be held upon such day and at such hour as the Commissioners shall from time to time determine.

No business shall be transacted at any meeting unless at least three members are present at the commencement and close of such business.

Extraordinary meetings.

7. The Chairman of the Commissioners may, whenever he thinks fit, and shall, upon request made in writing by three of the Commissioners, call an extraordinary meeting of the Commissioners.

Presidency

8. The Chairman shall preside at every meeting of the Commisof meetings, sioners; but, in case of his absence at the time appointed for holding a meeting, the Commissioners present may choose one of their number to be President of such meeting.

Transaction

9. (1) All questions at any meeting, including the question of of business adjourning such meeting, shall be decided by a majority of votes of the at meetings. members present. In case of an equality of votes the President for the time being of such meeting shall have a second or casting vote.

Delegation

(2) The Commissioners may delegate any of their powers to of powers to Committees consisting of such member or members of the body as they Committee. think fit. Any Committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the Commissioners.

Election of Chairman of Committee.

(3) A Committee may elect a Chairman at their meetings. If no Chairman is elected, or if he is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be Chairman of the same.

Adjournment, voting, etc., of Committee.

(4) A Committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes the Chairman shall have a second or casting vote.

(Secs. 10-14.)

10. The Chairman of the Commissioners may, by an order in writing, Power to appoint and dismiss such servants and officers, other than engineers and appoint their subordinates, as may be required for the purposes of this Act; and he may control them as he shall see fit.

There shall be paid to such servants and officers, respectively, such salaries as may appear to the Commissioners to be proper.

11. The Lieutenant-Governor may, when satisfied that the objects When of their appointment have been fulfilled, direct that the powers and of their functions of the Commissioners shall cease.

appointment fulfilled. Lieutenant-Governor may direct Commissioners' powers and function to cease.

PART II.

DRAINAGE SCHEME.

12. The Commissioners shall, within three months after their Commisappointment, cause a notification, in the language of the district, to be sioners to published by beat of drum in every village in which may be situate any fication of portion of the lands to be affected by the works proposed in such scheme the scheme and plans.

Every such notification shall be in the form in Schedule A hereto annexed, and shall further be published by posting the same at the office of the Collector and of the Subdivisional Officer, and in some conspicuous part of the village aforesaid, and at the Court of the Munsif within whose jurisdiction, and at the thana within the limits of which, such village is situate.

13. After the date named in such notification a list of the persons List of who may have given their assent or made any objection in writing in persons accordance with such notification shall be prepared and published, in the objecting manner provided in section 12, for the information of all concerned.

published.

Such list shall contain a specification of the land in respect of which such persons claim to vote as landholders, and of the titles in virtue of which they claim to vote, respectively; and there shall be appended thereto a notice that objections to the right of voting so claimed must be lodged with the Commissioners within one month after the publication of the said list.

14. (1) The Commissioners may, at some meeting to be held not Commisless than one month after such list has been published under the provi- sioners how to sions of section 13, proceed to ascertain whether the holders of half of the ascertain lands to be reclaimed or improved have assented in writing to the proprietors adoption of the scheme.

For the purpose of so ascertaining, the Commissioners shall take into account the vote of not more than one landholder in respect of any

^[1] For a list of appointments made under s. 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 15-16.)

one portion of the area affected; and, whenever more than one landholder shall have given his vote in respect of the same portion of such area, the Commissioners shall take into account the vote of the landholder who holds the lowest interest in respect of such area, and shall not take into account in respect of such area the vote of any superior landholder who may have voted.

Example-

A gives his vote as proprietor of 5,000 bighas;
B, as patnidar of 2,000 bighas included in A's proprietary of 5,000 bighas;
C, as mukarraridar of 100 bighas included in B's patni; D, as holding a permanent jama of 500 bighas included in A's proprietary of 5,000 bighas; but not in B's patni of 2,000 bighas;

the Commissioner shall take into account the votes of the respective landholders in respect of the following areas :-

D	for					· A	Bighas.
Ō	for	•••	• • •	•••	•••	• • • •	500
Ď	for	(2,000 - 100 =)	• • •	***			100
		(5,000 - 2,000 - 500 =)	•••	•••	•••	٠	1,900
	101	(=)000 - 2,000 - 000=)	•••	•••	•	•••	2,500
				Total		٠	5,000

Vote for estate. tenure, etc., held by two or co-sharers.

(2) One vote only shall be allowed in respect of an estate, tenure or under-tenure belonging to two or more co-sharers.

In order to ascertain whether this vote shall be taken as assenting or objecting to the adoption of the scheme, regard shall be had to the votes of the co-sharers individually, and account shall be taken of those only who actually vote.

If the majority assent, a vote of assent shall be deemed to have been given in respect of the estate, tenure or under-tenure.

If the majority object, a vote of objection shall be deemed to have been given.

If the number assenting and the number objecting are equal, no vote shall be deemed to have been given in respect of such estate, tenure or under-tenure

Persons specify the extent of their lands.

Commissioners to

decide who

is entitled

to vote.

15. The Commissioners may, in their discretion, refuse to take into account the vote of any person who, after being required to do so, fails to specify the extent of land held by him and the nature of the interest which he has in such land.

16. (1) Whenever the right of any person to vote as a holder of any land shall be disputed, the Commissioners shall determine whether the vote of such person shall or shall not be accepted in respect of such land; and their determination shall be final for the purposes of section 17:

Provided that any "recorded proprietor," as defined by section 3 of the Land Registration Act, 1876,[1] shall be entitled to vote in respect Ben Act 7 of any property of which he is the recorded proprietor.

(Secs. 17-20.)

(2) In the case of a landholder who is a proprietor disqualified to Vote for manage his own property under the provisions of the Court of Wards Act, property held by a Ben. Act 9 1879[1] or any similar law for the time being in force, or who is a minor minor or or a lunatic, the right to vote shall be exercised by any manager of the lunatic. property of such disqualified proprietor or minor or lunatic, appointed by the Court of Wards, or by the Civil Court under the provisions of any law for the time being in force, or, where no such manager has been appointed, by any person who, in the opinion of the Commissioners, duly represents the interests of such minor or lunatic.

6 of 1880.7

(3) Where the holder of any land cannot be found, such land shall Case of be altogether excluded in any computation that may be made in order to landholder not found. determine whether the landholders of not less than half of the area to be reclaimed or improved have assented to the adoption of the scheme.

17. If the landholders of not less than half of the area to be reclaimed If half of or improved, ascertained as above provided, shall have assented to the landholders or improved, ascertained as above provided, shall have asserted to the agree, Comadoption of the scheme, and not otherwise, the Commissioners shall missioners proceed to consider such scheme, together with the plans and estimates to consider for carrying out the same, and shall further consider such objections the scheme as have been made thereto; and may adopt such schemes, plans and estimates, or may alter and modify the same, and adopt the scheme, plans and estimates so altered or modified, or may disapprove or reject the same.

18. If the landholders of half of the area to be reclaimed and Power to improved do not assent to such scheme, but the landholders of half the proceed area to be affected by some portion of such scheme assent thereto, the portion of Commissioners may re-submit such portion of the scheme to the scheme. Lieutenant-Governor, and may, with his approval, proceed thereupon in manner aforesaid.

19. If the Commissioners adopt such scheme, plans and estimates, Scheme or any modification or alteration thereof, they shall, within one month Commisafter such scheme, plans and estimates, or some modification or altera-sioners to tion thereof, have been adopted by them, cause the same to be laid be laid before the Lieutenant-Governor;

Lieutenant-

and the Lieutenant-Governor may sanction the scheme, plans and Governor. estimates so adopted, or any portion thereof, as to him shall seem fit.

20. (1) The Commissioners may, with the previous assent of the Power to Lieutenant-Governor, at any time re-consider any scheme, plans or scheme and estimates adopted by them, and add to, alter or modify the same;

and, when any addition, alteration or modification has been adopted by them, they shall cause the same to be laid before the Lieutenant-Governor.

[1] Printed, ante, p. 279...

^[1] Printed, ante, p. 239.

6 of 1880.7

(Secs. 21-23.)

The Lieutenant-Governor may sanction such addition, alteration or modification, or any portion thereof, as he may think fit;

and, thenceforth the provisions of this Act shall apply to such addition, alteration or modification as if it had been a portion of the original scheme, plans or estimates; and every such addition, alteration or modification, after it has been adopted, shall be published by the Commissioners as to them shall seem fit.

No such addition, alteration or modification shall be adopted at a meeting at which the majority of the members present are not qualified as provided by section 4.

Publication of modified

(2) No addition, alteration or modification, under clause (1), to or of any scheme which affects any lands other than those which would be affected by some scheme theretofore published, shall be adopted by the Commissioners until the same has been published, for not less than fifteen days, according to the provisions of section 12, in every village in which may be situate any portion of the lands to be affected by such addition, alteration or modification;

nor shall any such addition, alteration or modification be adopted unless the landholders of not less than half the entire area to be affected by the scheme as so added to, altered or modified, assent to the same.

power for the acquisition of land.

Lieutenant-

Governor may order

scheme to be carried

out.

21. When the Lieutenant-Governor has sanctioned any scheme, plans and estimates as aforesaid, or some portion thereof, he may direct proceedings to be taken under the provisions of the Land Acquisition Act, 1870, or any other law[1] for the time being in force for the acquisi- 10 of 1870 tion of land for public purposes, in order to obtain any land likely to be required for the works mentioned in such sanctioned scheme, plans and estimates, or any portion thereof.

22. The Lieutenant-Governor may, if he thinks fit, order the works specified in such sanctioned scheme, plans and estimates, or portion thereof, to be executed by an officer to be thereunto appointed by the Lieutenant-Governor:

and may, subject to the sanction of the Governor General of India in Council, order the advance from the public funds of such sum of money as may be required for the purpose of making such improvements:

and such officer may cause the works specified in such scheme and plans to be executed, and for that purpose may by himself, his agents and workmen enter into or upon any lands and perform such works thereupon as may be required.

23. The Lieutenant-Governor may, at any time after the said works have been commenced, by an order sanction any alteration or modification

[1] See now the Land Acquisition Act, 1894 (1 of 1894), which repeals and re-enacts the Act of 1870. The Act of 1894 is printed in the General Acts, 1887-97, Ed. 1928,

(Sec. 24.)

of such scheme or plans suggested to him by the officer in charge of such works, if after communication with the Commissioners it shall appear to him that by such alteration or modification the general character and scope of the scheme will not be altered, nor greater expenditure incurred thereon than would be incurred in the scheme as originally sanctioned;

and, after such sanction, such alteration or modification shall be taken to be a portion of the scheme adopted by the Commissioners, in substitution for the portion of such scheme thereby altered;

and every such alteration or modification shall be published by the Commissioners as to them shall seem fit.

24. (1) Any person who alleges that damage has been caused to Claims to his property by any scheme or works commenced or carried out under this compensa-Act may, at any time before the expiry of the three years mentioned in damage clause (1) of section 28, prefer to the Commissioners a claim for compen-caused in carrying out sation in respect of such damage actually caused, and of all future damage scheme or likely to be caused, to such property by such scheme or works.

The Commissioners shall duly consider any such claim; and, if they Compensaare satisfied that such damage has been caused or is likely to be caused, assessed by they shall assess such compensation as to them appears fair and the Comreasonable.

If such person agrees to accept the amount so assessed, the same shall be paid to him.

If he do not agree to accept such amount, the Commissioners shall Reference to make a reference to the Civil Court in the manner in which a Collector Civil Court if amount is empowered to make a reference by section 15 of the Land Acquisition assessed be Act, 1870[1] and the provisions of Part III of the said Act shall apply not accepted. to any reference so made.

(2) When the persons interested in such property, to which damage Reference to has been caused as aforesaid, agree to accept the amount of compensation Civil Court where assessed by the Commissioners, but a dispute arises as to the apportion- amount of ment of the same or any part thereof,

or when the amount of compensation has been settled by the Court agreed on a reference under clause (1) of this section, and a similar dispute by Court, arises.

the Commissioners shall refer such dispute to the decision of the apportion-Civil Court;

as to its

Power to Lieutenant-Governor to modify scheme.

^[1] These references to Act 10 of 1870 should now be construed as references to the corresponding portions of the Land Acquisition Act, 1894 (1 of 1894)-see s. 2 (3) of the latter Act, in the General Acts, 1887-97, Ed. 1928, p. 217.

8 of 1880.T

(Secs. 25-27.)

and the provisions of Part IV of the said Land Acquisition Act[1] 10 of 1870. shall apply to any reference so made.

Reference tain cases be transferred to Judge or Munsif for disposal.

(3) When the amount of compensation assessed by the Commismay in cer sioners does not exceed one thousand rupees, any reference made under the said clause (1) may be transferred by the principal Civil Court of original jurisdiction of the district to any Subordinate Judge in the same Subordinate district; and such Subordinate Judge shall have power to hear and dispose of the same:

> and any reference made under clause (2) of this section may be transferred by such principal Civil Court to any Munsif in the same district, and such Munsif shall have power to hear and dispose of the same.

PART III.

EXPENDITURE AND APPORTIONMENT.

25. All amounts paid as compensation for any lands taken for the

Cost of com. pensation. purposes of this Act, or for damage inflicted in carrying out any scheme deemed part or works under this Act, or as salaries of officers, servants or establishof expense ments, or for surveys or valuations (whether antecedent or subsequent to the preparation of the scheme and plans), and all amounts otherwise tion. Such duly expended in carrying out the purposes of this Act, shall be included expense may be in, and deemed to constitute the cost of, construction of the works, and defrayed may be defrayed by advances from the public funds as provided by by advances from the section 22. public funds. Interest to be charged on such

[2]26. Interest shall be charged on all such advances until the same have been recovered.

advances. Rate of interest. and barring pound

interest.

[2]26A. (1) In every case in which the charging of interest is authorized by this Act, the rate chargeable shall be four per centum per annum.

(2) No compound interest shall be charged in any case. Explanation.—The interest recoverable from a tenant under section 42, clause (b), section 43, clause (b), section 44 or section 44A shall not be deemed to be "compound interest" within the meaning of this section although it includes simple interest upon interest which has been paid by a landholder or superior tenant in pursuance of this

Reports to be made and expenditure

27. The officer in charge of the said works shall, until the same shall be finally completed, once in every three months make a detailed report to the Commissioners of the progress of such works and the

[2] The ss. 26 and 26A were substituted for the original s. 26 by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 3, post, p. 715.

(Secs. 28-29.)

expenditure thereupon from the day up to which the next preceding report shall have been brought down;

and the Examiner of Public Works Accounts to the Government of Bengal, or some other officer authorized in that behalf by the Lieutenant-Governor, shall from time to time certify the sums advanced in accordance with the provisions of section 25, and the dates of such advances:

and every such certificate shall be final and conclusive evidence in a Civil Court, or in any proceedings under this Act, of the sums therein stated to have been advanced having been so advanced, and of the dates upon which they were respectively so advanced.

28. (1) The officer in charge of the works shall, as soon as they have Commisbeen completed, certify such completion to the Commissioners;

and the Commissioners shall, upon the expiry of three years from three years from complesuch completion being so certified to them, proceed to classify all the tion report lands benefited by the works according to the degree of benefit conferred; to classify and in such classification they shall distinguish the improved lands from benefited by the reclaimed lands.

It shall be lawful for the Commissioners at any time during such improved three years to make such inspections of the lands, and such surveys lands and thereof, and otherwise to collect such information, as shall in their lands. opinion conduce to the making of such classification and of the apportionment hereinafter mentioned.

(2) The Commissioners shall, after making such classification, Cost of proceed further to apportion the total cost of construction, together with construction, [interest][1] upon the improved lands and reclaimed lands, and shall draw interest, to up a statement showing the amount payable to the Collector by each be apportioned upon landholder-

(a) in respect of his improved lands, if any, and

(b) in respect of his reclaimed lands, if any.

In making this apportionment the Commissioners shall, as far as Amount paymay be possible, make payable in respect of each plot or field of improved able for the improved land a sum not exceeding the amount of the increased capitalized value lands not to which, in the opinion of the Commissioners, has been conferred on such of improveland by the works.

29. (Adjustment of excess or deficient payments of interest.) Rep. by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902),

expiry of the works, distinguish-

improved reclaimed

^[1] The references to Act 10 of 1870 should now be construed as references to the corresponding portions of the Land Acquisition Act, 1894 (1 of 1894)—see s. 2 (3) of the latter Act, in the General Acts, 1887-97, Ed. 1928, p. 217.

^[1] The word "interest" in s. 28 (2) was substituted for the words and figures "the interest mentioned in s. 26 " by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 4, post, p. 715.

348

(Secs. 30-33.)

When the land is part of a tenure. hamaah

30. Whenever any land, in respect of which any sum is apportioned as payable under the provisions of section * *[1] 28, forms part of a tenure, and of a tenure and of an under-tenure, it shall be lawful for missioners may declare the Commissioners to declare whether the holders of the estate, of the who shall be tenure or of the under-tenure shall be deemed to be the landholders liable to pay to the Collector the sum apportioned as payable in respect landholders. of such land.

Amounts made payreclaimed lands, respectively. Secretary of State Council to

have a per-petual lien for their recovery. Commissioners to report appor-

tionment

In default

sioners.

report.

31. The total sum so made payable in respect of the improved land of any one landholder, and the total sum so made payable in respect of able to be a charge upon the reclaimed lands of any one landholder with interest * * * * * [2] the improved from the date of apportionment, * * * * * * * * * * * * shall be a first charge upon such improved lands and upon such reclaimed lands respectively.

Such charge shall not be avoided by the sale of such lands or of any estate, tenure or under-tenure within which they are included, for for India in arrears of revenue or rent.

> 32. The Commissioners shall, so soon as conveniently may be after having apportioned the sums to be payable by the holders of the lands of any village respectively, make and publish a report describing the several lands in respect of which they have declared such sums to be payable, the names of the respective holders thereof who have been made liable to pay the same to the Collector, and the sum payable by each in respect of the same.

> Every such report shall distinguish between the reclaimed lands and the improved lands, and shall classify the latter according to the extent of the improvement.

> A copy of such report shall be sent through the Collector to the Commissioner of the Division, for confirmation by such Commissioner.

33. If the Commissioners shall, for the space of three months after of Commisthe completion of the entire works has been certified to them as aforesaid, neglect or refuse to proceed with the apportionment of the sums appointed by payable as aforesaid, or to make such report as aforesaid,

or, for the space of two months after any report and apportionment Governor to make apportionment and shall have been returned to them for further consideration and revision

(Secs. 34-35.)

6 of 1880.7

under the provisions hereinafter contained, neglect or refuse to proceed to such further consideration and revision as is required,

the Collector may serve them with a notice requiring them to proceed as aforesaid:

and, if for one month after service of such notice they neglect so to proceed, the Lieutenant-Governor may appoint such officer or officers as to him shall seem fit, to make or consider and revise such apportionment and report, and to do all or any of the subsequent acts which the Commissioners are hereby required or empowered to do in respect of such apportionment and report:

and every apportionment and report so made or revised, and every such act so done, shall have the same force and effect as if the same had been made, revised or done by the Commissioners.

34. Whenever any apportionment and report have been made in Reports pursuance of the provisions hereinbefore contained, the Commissioners to be shall cause such report to be published by affixing in every village in published. which any lands mentioned therein are situate a copy of so much thereof as relates to such lands, and also a like copy at the office of the Collector and of the Subdivisional Officer, and at every Munsif's Court within whose jurisdiction, and at every police-thana within the limits of which, such village, or any part thereof, is situate.

The fact of such apportionment and report having been made, and such copies having been affixed, shall also be notified by beat of drum in every such village.

35. Any person who may deem himself to be aggrieved by any such Appeal apportionment may, within one month after such report has been against published, prefer an objection before the Commissioners, and the apportionment. Commissioners shall be bound to inquire into and decide upon such objection:

and any person who is dissatisfied with such decision may, within one month from the date of such decision, appeal to the Commissioner of the Division against such apportionment;

and such Commissioner shall cause notice of the day fixed for the tearing of such appeal to be published by affixing the same in the office of the Collector and of the Subdivisional Officer and in a conspicuous place in every village, and in the Court of every Munsif within whose jurisdiction, and at every police-thana within the limits of which, any of the lands mentioned in such report are situate.

Such Commissioner shall hear such appeal and the objections thereto of all persons interested, and may confirm such apportionment, or may revise and alter the same as to him shall seem fit, or may return the same to the Commissioners for further consideration and revision:

^[1] The figures and word "26 or," in s. 30 were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, post, p. 715.

^[2] The words "upon such sums at five per centum per annum," in s. 31 were repealed by ibid.

^[3] The words and figures "and any interest payable under s. 29, and any interest payable under clause (1) of s. 26, but not paid or recovered before the apportionment. under s. 28," in s. 31 were repealed by ibid.

(Secs. 36-36A.)

Provided that the total sum apportioned by every apportionment and report so revised and altered, as payable in respect of all the lands improved or reclaimed by the works shall not be less than the total cost of the construction of such works within the meaning of section 25.

Every such apportionment and report, when revised or altered, shall, so far as the same has been altered, be published, and be liable to appeal, in like manner as the original apportionment and report.

The decision of the Commissioner of the Division upon any appeal under this section shall be final.

Final determination of apportion-

Power to

add to, or

alter, declaration as

to names

of persons liable to

36. Whenever the Commissioner of the Division shall confirm any apportionment and report, or whenever one month shall have elapsed from the publication of any report without any appeal therefrom having been preferred,

he shall pass an order declaring the sums payable in respect of the lands respectively and the persons liable to pay the same to be determined, and shall cause such order to be published in such manner as to him shall seem fit.

[1] 36A. (1) If any order passed under section 36, so far as it declares what persons are liable to pay any sum under this Act in respect of any land, appears at any time to require revision,—

(a) by reason of the omission of the name of any co-sharer of such land, or

(b) by reason of any change having taken place in the ownership or joint ownership of such land, or

(c) for any other substantial reason,

the Collector may, on the application of any holder of the land, or of his own motion, and after such inquiry and upon such conditions (if any) as he may think proper, add to or alter such order:

Provided that every person whose name is so added or who is materially affected by any such alteration has had an opportunity of being heard by the Collector.

(2) Any person who is dissatisfied with any addition or alteration made under sub-section (1) may, within one month after the same was made, appeal to the Commissioner of the Division.

(3) The Commissioner shall cause notice of the day fixed for the hearing of such appeal to be published in the manner prescribed by section 35; and shall, on the day so fixed, hear such appeal and all objections thereto advanced by persons interested and may confirm or revise the addition or alteration, or may remit the case to the Collector for further consideration and revision.

(Secs. 37-38.)

- (4) The decision of the Commissioner on any such appeal shall be final.
- (5) Every addition and alteration made under this section shall be published, in such manner as to the Collector may seem fit, after the expiration of one month-
 - (i) from the time when the addition or alteration was made, or
 - (ii) if any appeal has been preferred under sub-section (2), from the decision of the appeal;

and the addition or alteration shall take effect from the date of such publication; and proceedings may thereupon be taken under this Act, in respect of such addition or alteration, as if a new order embodying it had been made under section 36.

PART IV.

RECOVERY OF SUMS DUE TO THE COLLECTOR.

37. As soon as any apportionment has been determined as aforesaid, Collector to the Collector may cause a notice in the form in Schedule B hereto annex- of apportioned to be served upon any landholder who has not paid the sum payable ment, requiring by him.

payment or

Such notice shall require such landholder, within one month from engagement to pay. the date of [1] [the service thereof] upon him, to pay such sum, with interest[2] [up to the day of payment,] or to enter into an engagement for the payment, by instalments extending over a period of not more than ten years, of such sum, together with interest * * *[3] on all instalments remaining unpaid at the date of such payment.

38. If any landholder fails to discharge the sum made payable in If amount respect of his improved lands or in respect of his reclaimed lands, or discharged, fails to enter into an engagement for the payment thereof as in this Act the Collector hereafter provided, or, having entered into such an engagement, fails it as a to discharge any instalment payable thereunder, such sum or such instalment, together with interest * * *,[4] shall be recoverable under the provisions of any law[5] for the time being in force for the recovery of public demands.

[5] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

^[1] Section 36A was inserted by the Bengal Drainage (Amendment) Act. 1902 (Ben. Act 2 of 1902), s. 6, post, p. 716.

^[1] The words "the service thereof," in s. 37, were substituted for the words "its service" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 7 (1),

post, p. 716.
[2] The words "up to the day of payment," in s. 37, were substituted for the words "at the rate of five per centum per annum" by ibid.
[3] The words "at the said rate," in s. 37, were repealed by ibid, s. 7 (2).
[4] The words "thereupon at five per centum per annum," in s. 38, were repealed by ibid, s. 5, and are omitted.

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6 of 1885.

(Secs. 39-41A.)

Collector may also with sanction of Board of Revenue amount by leasing or mortgaging improved or reclaimed

lands.

39. If the Collector thinks it inexpedient to proceed under the provisions of section 38, or, having so proceeded shall have failed to realize the sum due, he may, with the sanction of the [1] [Commissioner of the Division] raise the amount necessary to discharge the sum or raise unpaid instalment remaining unpaid-

> (a) by letting in perpetuity or for a term, on payment of a premium equivalent to such amount, the whole or any part of such improved land or reclaimed lands;

> (b) by mortgaging the whole or any part of such improved lands or reclaimed lands;

> (c) by letting in farm or managing by himself or another the whole or any part of such improved lands or reclaimed lands; or

> (d) partly by one of such modes and partly by another or others

For the purposes of this section, the Collector may exercise all the powers of the owner of such improved or reclaimed lands; and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

Recovery of unrealised portion of charge.

40. In case the Collector certifies that any sum payable as hereinbefore provided cannot be realized as provided by section 38 or 39, so much of such sum as shall not have been so realized shall be a charge upon any profits that may accrue from the property vested in Collector under the provisions of section 47.

Power to repay advances

41. Any landholder who has entered into an engagement for the repayment of any sum apportioned as aforesaid may at any time repay to the Collector the entire amount of the principal sum which shall be then remaining due, and interest thereupon up to the day of payment; and thenceforth the said engagement shall be terminated, and all liabilities in respect thereof for principal or interest shall determine.

[2]PART IV-A.

RECOVERY OF SHARE OF PAYMENTS FROM CO-SHARERS.

Power to recover share of payments from co-sharers.

41A. When any landholder has made any payment under the foregoing provisions of this Act in respect of land which he holds jointly

(Sec. 42.)

with other persons, and such payment exceeds the amount which is proportionate to his individual interest in the land, he may-

(a) recover from his co-sharers, respectively, such contributions towards such payment as are proportionate to their individual interests in the land, either-

(i) in the same manner in which arrears of rent are recoverable under the Bengal Tenancy Act, 1885, [1] and under similar penalties, or

(ii) if such co-sharers have been declared by any order passed under section 36 or revised under section 36A to be liable to pay-upon application to the Collector as hereinafter provided; or

(b) take credit for such contributions as aforesaid in any adjustment of accounts between himself and his co-sharers.

PART V.

RECOVERY BY LANDHOLDERS OR SUPERIOR TENANTS OF THE COST OF THE WORKS FROM PERSONS HOLDING LAND UNDER THEM.

42. Every landholder who has been charged with any sum by a Proprietor report published as aforesaid may, after he has paid or engaged to pay may the same.—

recover from

(a) proceed under any law for the time being in force to enhance the tenants. rents of any person holding immediately from him any land the productive powers of which have been increased by any works carried out under this Act: provided that any such person may at his option elect to pay under clause (b) of this section; or

(b) recover such sum or any part thereof, according to the proportions hereinafter provided, with interest * * *[2] from the date of payment by him of any portion thereof, from the persons holding immediately from him lands in respect of which such sum has been declared payable, and which have been benefited by any scheme or works carried out under this Act.

(c) The sum recoverable by such landholder from each such person under clause (b) in respect of the lands of each class shall bear the same proportion to the sum charged upon such landholder in respect of all lands of that class as the area of the lands of that class which are held by such person bears to the area of the lands of the same class in respect

^[1] The words in square brackets were substituted for the words "Board of Revenue" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch. Pt. II-see Vol. III of this Code.

^[2] Part IV-A was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 8, post, p. 716.

^[1] Printed in Vol. I of this Code. [2] The words "at the rate of five per centum per annum," in s. 42 (b) were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5. post, p. 715.

(Secs. 43-44.)

of which the landholder has been charged. No person from whom a landholder is authorized to recover any sum under this section shall be liable to pay in any one year more than one-tenth part of the total sum so recoverable from him, and no person shall be liable to pay in one year more than the increased annual value of the lands in respect of which the payment is made.

Recovery by superior

43. Any superior tenant, who has made any payment to a landholder under the provisions of clause (b) of section 42, may-

- (a) proceed under any law for the time being in force to enhance the rents of any person holding directly from him lands the productive powers of which have been increased by any works carried out under this Act: provided that any such person may at his option elect to pay under clause (b) of this section: or
- (b) recover the sum or part of the sum which has been so paid by him according to the proportions and subject to the rules laid down in clause (c) of section 42, with interest *
 - *[1] from the date of payment by him of any portion thereof, from the persons holding directly from him lands in respect of which the payment has been made. and which have been benefited by any scheme or works carried out under this Act.

Mode and time of payment.

44. (1) The sum payable to a landholder or superior tenant in any one year under clause (b) of section 42 or under clause (b) of section 43 shall be payable by equal instalments upon the days appointed for the payment to such landholder or superior tenant of the rent of the lands concerned, and shall be recoverable as if the same were an arrear of rent.

Provision in pute as to to be paid.

(2) If such landholder or superior tenant and any person holding lands directly from him cannot agree as to the amount which such perthe amount son shall pay, such landholder or superior tenant may serve such person, through the Collector, with a notice setting forth the amount which he claims, and requiring such person, within one month after the service of such notice, to pay the amount claimed or enter into an engagement for the payment thereof by instalments extending over a period of not more than ten years, or appear before the Collector and object.

Collector to objections

(3) If such person do not within the said period of one month appear and object, the amount set forth in such notice shall be recoverable, with interest * * *. [2]

(Secs. 44A-44B.)

6 of 1880.7

If such person appear and object, the Collector shall dispose of such objection, and his decision shall be final.

The Collector may direct that any sum of money payable under his decision, together with any cost awarded by him, be paid by instalments extending over a period of not more than ten years.

The provisions of clause (1) of this section shall apply to every sum payable according to an order of the Collector passed under this section.

[1]44A. (1) If any landholder or superior tenant has made any pay-Recovery, ment under the foregoing provisions of this Act in respect of lands which under the are or were held by tenants immediately from him, and which have been certificate procedure, benefited by any scheme or works carried out under this Act,

and if he has not enhanced the rent of such tenants under section made in respect of 42, clause (a), or section 43, clause (a), or recovered under section 42, land held clause (b), section 43, clause (b), or section 44 the sums due to him, by tenants.

he may, upon application to the Collector as hereinafter provided, but subject to the provisions of sub-section (1) of section 44 as to instalments, recover from such tenants such sums as he may be entitled to according to the proportion and under the rules laid down in clause (c) of section 42, with interest from the date of such payment.

(2) An application in respect of a payment may be made under this section by a landholder who was declared by an order passed under section 36 to be liable to make such payment, although his name has been removed, by an order made under section 36A, from the list of persons declared liable to make payments.

- (3) If any tenants referred to in sub-section (1) have transferred their tenancies, the sums referred to in that sub-section may be recovered thereunder-
 - (a) from the said tenants for the period during which they occupied the benefited land since the carrying out of the said scheme or works, or
 - (b) from the tenants in possession.

[1]44B. Notwithstanding anything hereinbefore contained, no sum $_{\rm Bar\ to}$ shall be recoverable under section 42, clause (b), section 43, clause (b), recovery of section 44 or section 44A, in respect of any lands which have been bene-money from tenants in fited by any scheme or works carried out under this Act, when, in certain consequence of such scheme or works-

(a) the rent of such lands has been increased, or

(b) rent has for the first time been imposed on such lands.

^[1] The words "at the rate of five per centum per annum," in s. 43 (b) were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5,

^[2] The words "at five per centum per annum," in s. 44(3), were repealed by ibid.

^[1] Sections 44A and 44B were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 9, post, p. 716. 6 L. D.

(Secs. 45-48.)

Proviso.

45. No person from whom any sum has been recovered under clause (b) of section 42 or under clause (b) of section $43\lceil 1 \rceil$ [or under section 44A] shall be subject to any claim for enhanced rent on account of the benefit caused by the works to his lands.

PART VI.

MISCELLANEOUS.

Drainage works to be subject to relating to embankments.

46. All outlets and water-channels, natural or artificial, which shall be altered, enlarged, excavated or cut under the provisions of this Act. and the construction and maintenance of embankments and of dams and works therein or connected therewith, shall, save as hereinafter provided. be subject to the law[2] for the time being in force regulating the construction and maintenance of public embankments and public rivers. channels and outlets.

Lands and vested in behalf of Secretary

47. All lands which are taken under the provisions of this Act for works to be the purpose of the construction of works therein or thereon, and all vested in Collector on works constructed under the provisions of this Act, as well as all outlets, of water-channels, embankments and dams so constructed, altered, enlarged, excavated or cut shall be vested in the Collector of the district for the time being, on behalf of the Secretary of State for India, in order to effectuate and maintain the objects of this Act;

> and, to assist the Collector in the management of the same, the Lieutenant-Governor may appoint, or authorize the election by the landholders aforesaid of, a Committee consisting of not less than four or more than six persons, being themselves holders of the lands reclaimed or improved.

Cost of

48. (1) The expense of keeping in efficient order and repair any improvements or works effected under this Act shall be charged to the profits from the property vested in the Collector under section 47;

and, if such profits shall not suffice, the balance shall be paid to the Collector in the proportions of the original contributions by the holders for the time being of the land which have been benefited by such works:

and all sums payable to the Collector under the provisions of this section shall be recoverable in the manner provided by section 38, or in the manner provided by section 39;

(Secs. 49-50.)

6 of 1880.1

and every proprietor or other person who has paid any such sum may recover the same, or any part of the same, in the proportion and subject to the rules laid down in section 42 or 43, as the case may be, [1] [and for that purpose the procedure prescribed by section 41A or section 44A and sections 51B and 51C shall be applicable].

(2) Any such amount as is specified in section 25 which, from over-Recovery of sight or other cause, has been omitted from the apportionment and items omitted report made under section 32 or section 33, may be charged and from recovered under the provisions of clause (1) of this section.

(3) If, on the first day of January next before the last instalments Surplus payable under the provisions of section 36 are due, there is, after provid-pronts from ing for the expense of keeping in efficient order and repair the improve-vested in ments and works executed under this Act, a surplus of the profits from under under the property vested in the Collector under section 47, such surplus, or section 47 as much thereof as will suffice, shall be appropriated to the liquidation to be appropriated to of the said last instalments.

Any landholder who has paid any such instalment in advance under of debt to Government. the provisions of section 41 shall be entitled to a refund in proportion with interest at [2] [four] per cent. per annum.

(4) The Lieutenant-Governor may at any time, in his discretion, Cost of direct that the total average annual expense, which over and above such many be profits as aforesaid is necessary to keep such improvements and works capitalized in efficient order and repair, be estimated, and that there be levied from and the capitalized such landholders, in lieu of all future contributions to the maintenance amount of such improvements and works, such amount as, being invested in Government securities at the current rate of interest, shall yield a sum equal to such average annual expense. The provisions of sections 31, 38 and 39 shall apply to such capitalized amount.

49. The Commissioners, the Commissioner of the Division, and Powers for every officer appointed by the Lieutenant-Governor under section 33, taking evidence. shall have the powers conferred on Civil Courts by the Code of Civil 10 of 1877. Procedure [3] for compelling the attendance of witnesses and the production of evidence, and for examining witnesses in any inquiry or appeal which they or he may be empowered to make or entertain under the provisions of this Act.

> 50. Any land held free of rent or revenue, being less than one hun-Rent-free dred standard bighas in extent, and not being a property entered on the lands may Collector's general register of revenue-free lands, may, for the purposes subordinate

payment

^[1] The words and figures in square brackets in s. 45 were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 10, post, p. 716.

[2] Section 91 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), post, p. 483, declares that nothing in that Act shall apply to any embankment, land or water-course which is under the operation of the present Act.

^[1] The words and figures in square brackets, in s. 48 (1), were added by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 11 (1), post, p. 716.
[2] The word "four," in s. 48 (3), was substituted for the word "five", by ibid,

^[3] Act 10 of 1877 was repealed by Act 14 of 1882 which has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code-see s. 158 thereof.

(Secs. 51-51B.)

of this Act, be deemed to form a tenure or under-tenure held immediately from some landholder; and the Commissioners shall determine who shall be deemed to be the landholder in respect of such tenure:

Provided that any holder of such land, who may deposit the cost of survey of his land at a rate to be approved by the Commissioners and calculated on the area claimed by him, shall be entitled to be deemed a landholder, in respect of such lands, within the meaning of this Act.

Sum payable by holder of rent-free land to be pavable in two

51. Wherever any land, as mentioned in the last preceding section, shall be deemed to form a tenure or under-tenure held immediately from a landholder as therein provided, every sum payable to the landholder in respect of such land in any one year shall be payable in two equal instalments. instalments on such dates as the Commissioner of the Division may fix.

Such Commissioner shall cause due notice to be given in the villages concerned of the dates so fixed by him.

Recovery. under the certificate made in respect of land held free of rent or revenue.

[1]51A. Any person who has been determined under section 50 to be the landholder in respect of land, held free of rent or revenue, which has procedure of benefited by any scheme or works carried out under this Act, and who has made any payment under the foregoing provisions of this Act in respect of such land, may, upon application to the Collector as hereinafter provided, but subject to the provisions of section 51, recover the amount of such payment from any person holding such land immediately below him.

Further provisions as to applications under sections 41A, 44A or 51A.

[1] 51B. (1) Every application to the Collector under section 41A for the recovery of contributions from co-sharers towards a payment made by a landholder under the foregoing provisions of this Act must-

- (a) be made within six months after such payment was made, and
- (b) specify the amount of such payment, and the amount of such contributions due from each co-sharer.
- (2) Every application to the Collector under section 44A or section 51A for the recovery of sums due, from tenants of, or persons holding lands benefited by any scheme or works carried out under this Act, on account of any payment made by the applicant under the foregoing provisions of this Act, must-
 - (c) be made within six months after such sums became due,
 - (d) specify the amount of such payment, and the date on which it was made.

(Sec. 51C.)

- (e) specify the amount of such sums due from each tenant or person holding land, and the date on which it became due,
- (f) be accompanied by a declaration, signed by the applicant and stating-
 - (i) that he has not, on account of the said scheme or works, enhanced the rent, if any, payable in respect of the said lands or any of them, and
 - (ii) that he has not taken from such tenants or persons holding land, or any of them, any premium on account of such scheme or works.
- (3) Every application under section 41A, section 44A or section 51A must-
- (g) be signed and verified in the manner provided by sections 51 14 of 1882. and 52 of the Code of Civil Procedure [1] for the signature and verification of plaints,

(h) be accompanied by a court-fee of eight annas, and

(i) request the Collector to make a certificate authorizing the recovery of the said contributions or sums, as the case may be, under the Public Demands Recovery Act, 1895.[2]

Ben. Act I ož 1895. 45 of 1860. 6 of 1880.1

(4) Every declaration made under clause (f) shall, for the purposes of section 199 of the Indian Penal Code, be deemed to be a declaration which the Collector is authorized by law to receive as evidence.

(5) If the Collector at any time has reason to believe that any declaration accompanying an application as aforesaid, or any part thereof, is false, he may reject the application and leave the applicant to pursue his claim in a Civil Court.

[3]516. (1) Upon receiving any such application, the Collector may, Grant of if he thinks fit, make a certificate as aforesaid.

certificate,

(2) Every such certificate shall have the same effect as a certificate thereof. made under section 7 of the said Public Demands Recovery Act, 1895;[2] and the same notices shall be issued, and the same proceedings may be taken, with respect thereto, by the Certificate Officer, as in the case of a certificate made under that section.

^[1] Sections 51A to 51J were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

^[1] Act.14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure. 1908 (5 of 1908), and this reference should now be taken to be made to rules 14 and 15 in Order VI in Sch. I to the latter Code—see s. 158 thereof.

^{2]} Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the corresponding portion of the latter Actsee the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, in Vol. III of this Code.

^[3] Section 51C was inserted by the Bengal Drainage (Amendment) Act. 1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

6 of 1880.1

(Secs. 51D-51E.)

- (3) The person in whose favour any such certificate is made shall be deemed to be the decree-holder for the amount mentioned in the certificate, and the person against whom the certificate is made shall be deemed to be the judgment-debtor for the said amount; and all proceedings taken by the Certificate Officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost, and on his responsibility, and not otherwise.
- (4) If any person against whom any such certificate is made objects that the contributions or sums claimed by the person who applied for the certificate are not legally due, or exceed the sums which the applicant could recover from him in a Civil Court as being payable in respect of his individual interest in the land, and if the Certificate Officer considers there is probable ground for such objection, the Certificate Officer may modify the certificate or, if he thinks fit, cancel the certificate and leave the applicant to pursue his claim in a Civil Court.

Power of Collector to auspend

[1]51D. (1) If, in any area benefited by any scheme or works carried out under this Act, there has occurred in any year a total or serious recovery of failure of crops, then, notwithstanding anything hereinbefore contained, dues in cases of failure of the Collector may,

after such inquiry (if any) as he deems necessary, and with the

previous sanction of the Commissioner of the Division,

by written order, suspend, for the whole or any part of that year, the recovery of all or any sums which are recoverable from landholders and tenants, respectively, in respect of such area under the foregoing provisions of this Act.

- (2) Every such order shall be published in the manner prescribed in section 12 for the publication of the notification referred to in that section.
- (3) When any such order has been duly published, all proceedings under the Public Demands Recovery Act, 1895[2] and all suits by land- Ben. Act 1 holders or tenants, for the recovery of any sums to which such order of 1895. relates, shall be stayed during the period specified in the order.

Bar to jurisdiction of Courts in respect of order of suspension.

[8]51E. An order duly made and published under section 51D shall not be questioned in any Civil or Revenue Court.

(Secs. 51F-53.)

[1]51F. If any landholder or tenant, during any period specified in Procedure an order duly made and published under section 51D, collects any sums holder or payable to him to which such order relates, then all sums payable by tenant him to which such order relates may be recovered from him as if such during order had not been made.

suspension.

[1]51G. When an order has been duly made and published under Extension of section 51D, suspending the recovery of any sums for any period, then, payment of if such sums form part of a sum which is, in pursuance of this Act, pay-instalments, able by instalments, the period remaining for the payment of such when order of suspeninstalments shall be extended by the period specified in such order, and sion made. no more than one instalment of the sum remaining due shall be payable in any succeeding year.

[1]51H. When an order has been duly made and published under Extension of section 51D, suspending the recovery of any sums for any period, such period of limitation, period shall be excluded in computing the period of limitation prescribed when order for a suit or application for the recovery of such sums.

of suspen-

[1]51J. When an order has been duly made and published under Interest not section 51D, suspending the recovery of any sums for any period, to accrue then notwithstanding anything hereinbefore contained, no interest shall period of accrue on such sums during such period. *

52. All notices under this Act required to be served, may be served Service of by delivering the same to the person to be served or by posting the same notices. upon the door of his dwelling-house, or, if such person cannot be found and his dwelling-house is not known, then by posting the same on some conspicuous part of the land to which such notice relates, and copies thereof at the Munsif's Court within whose jurisdiction, and the policethana within the limits of which, such land is situate.

53. No proceeding under this Act shall be defeated or invalidated Proceedings by reason of any defect in the number or property of assenting land-not to be invalidated holders, nor by any defect or omission in the publication or service of by formal any notification, notice or order, unless material injury is done to any person by such defect or omission;

and every order and report of the Commissioners, of the Collector and of any officer appointed by the Lieutenant-Governor under section 33 shall be conclusive evidence that all notifications and notices hereby required as preliminary thereto had been duly published and served, and that all other preliminaries thereunto had been duly performed, and, save as is hereinbefore provided, shall be final and conclusive.

^[1] Section 51D was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben

Act 2 of 1902), s. 12, post, p. 716.

[2] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, in Vol. III of this Code. [3] Sections 51E to 51J were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

^[1] Sections 51F to 51J were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

(Secs. 3-5.)

PART II.

OF THE SURVEY.

3. The Lieutenant-Governor may, whenever he shall think fit, order Lieutenant that a survey shall be made of the land situated in any district or in Governor may order any part of a district or in any specified tract of country, and that the survey. boundaries of estates, tenures, mauzas or fields be demarcated on the lands so to be surveyed:

Provided that, in any district of which any survey may have been completed and approved by the Government, it shall not be lawful for the Lieutenant-Governor to order a new survey of lands on the banks of rivers or on the sea-shore to be made for the purposes described in Act 9 of 1847[1] (an Act regarding the assessment of land gained from the sea or from rivers by alluvion or dereliction within the Provinces of Bengal, Bikar and Orissa), until ten years shall have expired from the completion and approval of any such previous survey.

4. For the purpose of carrying out any survey directed to be made Lieutenantunder the last preceding section, or for any or all of the purposes of this may Act.

appoint Superintendent of

the Lieutenant-Governor may appoint a Superintendent of Survey. Survey. who may exercise all or any of the powers of a Collector under this Act;

and may appoint one or more Assistant Superintendents and Deputy Collectors, who shall exercise all the powers of a Collector in respect to such matters under this Act as may be delegated to such Assistant Superintendents or Deputy Collectors respectively by the Collector or Superintendent of Survey, and not otherwise:

Provided that, notwithstanding the appointment of a Superintendent of Survey for any tract of country, it shall be competent to the Board of Revenue to direct that the Collector shall perform any duties under the Act within the said tract.

5. Before entering on any lands for the purpose of a survey the Collector to Collector shall cause to be published a proclamation addressed to the publish prooccupants of the lands which are about to be surveyed and of the con-before enterterminous lands, and to all persons employed on or connected with the ing on lands. management of, or otherwise interested in, such lands, calling upon them to attend, either personally or by agent, before the Collector or any officer authorized by the Collector in that behalf, at such places and at such times as shall be stated in such proclamation, during the demarcation and survey of the land, for the purpose of pointing out the

^[1] The Bengal Alluvion and Diluvion Act, 1847. It is printed in Vol. I of this Code.

(Secs. 6-10.)

boundaries and of rendering such aid as may be necessary in setting up or repairing such boundary-marks as may be required, and of affording such assistance and information as may be needed for the purposes of this Act.

Such proclamation shall be published by posting a copy thereof at the Court of the Judge and at the office of the Collector of every district within which any portion of the lands about to be surveyed may

be known to be situated:

at every subdivisional office, police-station, *Munsif's* Court and subregistrar's office within the jurisdiction of which any portion of the land about to be surveyed may be known to be situated;

at one or more mál-cutcherries on each estate;

and at such other place or places as to the Collector may seem fit.

Collector may enter upon land. 6. After issue of a proclamation as aforesaid, the Collector and any persons acting under his authority may enter upon such lands, and do all things and make all inquiries necessary for effecting the survey and demarcation of the boundaries thereof.

Collector may serve special notice. 7. The Collector may also, by a special notice, require any such person to attend before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than fifteen days after the service of the notice, at any places, for any of the purposes aforesaid; and every person on whom such special notice may be served shall be legally bound to attend as required by the notice, and to do any of the things mentioned in section 5, and to give any information which may be required, so far as he may be able to give it.

Collector to pay price of materials or labour supplied.

8. When any materials or labour shall have been supplied for any of the purposes mentioned in section 5, the Collector or other officer making a requisition under that section shall forthwith cause the price of such materials or labour to be paid to the person by whom the same were supplied.

Collector may require occupants to clear boundarylines. 9. The Collector, or other survey-officer authorized by the Collector in that behalf, may, by a special notice, require any occupant to clear any boundary or other line which it may be necessary to clear for the purposes of the survey, by cutting down and removing any trees, jungle, fences or standing crops.

Compensation. 10. If any demand for compensation be made in respect of the clearance of any line in accordance with a requisition under the last preceding section, the Collector shall ascertain and record the nature and estimated value of any trees, jungle, fences or standing crops which may have been cut down or removed, and shall offer adequate compensation to the owners thereof, together with payment for all expenses incurred in carrying out the said requisition.

(Secs. 11-12.)

11. When the demarcation of a village or other convenient tract has Amin or been completed, the amin or other survey-officer shall, before sending surveyin to the Collector the many and papers relating thereto. in to the Collector the maps and papers relating thereto,

by a general notice, in which the names of all persons required to persons to appear shall be specified, and which shall be posted up at a convenient or papers. place in the village or tract,

call upon

call upon all persons who have pointed out any boundaries in such village or tract on behalf of those interested to attend before him within three days of the publication of the said notice for the purpose of inspecting the maps, field books and similar papers in which any boundary pointed out by any such person has been represented, and, by signing such maps and papers, to certify that the boundaries have been laid down in accordance with the boundaries pointed out by them;

and every person so called upon shall be legally bound to attend before such amin or survey-officer, and to inspect the papers, in accordance with such requisition.

Any person so called upon who may object to sign the maps and Statement papers as aforesaid shall be required to state his objections in writing, of objecand such statement shall be attached to the record of the demarcation of the village or tract, and shall be submitted to the Collector together with the maps and papers.

The signature affixed to any maps or papers under this section shall Effect of be in attestation of the fact that the boundaries thereon represented or signature. any of them have been represented in accordance with those pointed out by the person signing; and the affixing of such signature shall not be held to prejudice the right of any person interested to make any objection to such boundaries on any other ground before the Collector under the next succeeding section.

12. On receipt in the Collector's office of the maps or papers showing On receipt any boundaries which have been demarcated, the Collector shall cause of maps a notification to be posted in his office, and in such other places as he Collector to post may think proper, informing all persons concerned that the maps and notification papers relating to the boundaries in the village or tract specified are in office. open to inspection; and requiring any person who may have any

objections to prefer, to prefer such objections within six weeks of the date of the posting of such notification, after which time the Collector will proceed finally to confirm the boundaries as laid down for the

purposes of the survey.

Whenever the Collector shall have reason to believe (either from the Collector failure of any person interested or his representatives to sign the maps when to issue special and papers on the spot when required by the survey-officer to do so under notice. the last preceding section, or for any other reason) that any zamindar or

(Sec. 13.)

person interested is likely to object to any boundary as laid down or as represented in the said papers,

the Collector shall cause a special notice, requiring such zamindar or other person to attend personally or by duly authorized agent before him, or before any person authorized by the Collector in that behalf, within a specified time, which shall not be less than one month after the service of the notice, for the purpose of signing and thereby admitting the correctness of any maps or other papers which have been prepared under this Act in respect of any boundary in which such zamindar er other person is interested, or of stating in writing the substance of any objection which he may wish to prefer against the correctness of such maps or papers;

and, if any person so summoned shall fail to attend and to sign the said maps or papers, or to give in a written statement of his objections within the time prescribed, the Collector may proceed finally to confirm the boundaries as represented in such maps and papers, for the purposes of the survey and of this Act:

If agent deposits expenses of making copies, Collector to order them to be prepared.

Provided that, if within the time specified any such duly authorized agent deposits with the Collector the necessary expenses of making copies of the said maps or papers, the Collector shall order such copies to be prepared, and as soon as they are prepared, shall cause a notice to that effect to be posted at his office, and the said agent shall be allowed such time as may be specified in such notice, not being less than fifteen days from the posting thereof, for the purpose of signing or of giving in a written statement of objections.

Procedure when objection is stated. When a written statement of objections has been given in, as in this section provided, the Collector, after holding any further inquiry which he may deem necessary, shall pass such order in respect of such objections as to him shall seem fit; and, if the objections shall seem to him not to be well-founded, shall direct that all expenses of such further inquiry, and all expenses entailed on any other person by such inquiry, shall be recovered from the person who made the objection.

Persons making subsequent objection may be required to deposit costs of further inquiry.

13. Whenever any person, having failed to sign the maps and papers, or to give in his objections in writing within the time prescribed by the notification or by the special notice mentioned in the last preceding section, shall, at any time before the Collector has finally confirmed the boundaries for the purposes of the survey, prefer any subsequent objection against the correctness of any maps or papers in respect of which such notification or notice was issued,

the Collector shall require him to deposit the estimated costs of any further inquiry which it may be necessary to make in respect of his objection;

(Secs. 14-16.)

and, if the said person shall fail to deposit such costs within the time specified by the Collector, he shall be deemed for all purposes of this Act to have admitted the correctness of the said maps and papers.

If the costs of any inquiry which may be deemed necessary be deposited, the Collector shall make such further inquiry at the expense of the person so objecting; and, if the objection shall seem to the Collector not to be well-founded, he may pass such order as he shall think fit in respect of the recovery from the objector of any sum expended by the Collector on the inquiry in excess of the sum deposited, and of any necessary expenses incurred by any other persons on account of such inquiry:

Provided that no person so making an objection after the prescribed time shall, under any circumstances, be entitled to recover the expenses which he is required to deposit before any further inquiry is made in

respect of such subsequent objection.

PART III.

OF BOUNDARY-MARKS.

14. The Collector may cause to be erected temporary boundary-Collector marks of such materials, and in such number and manner, as he may direct, on any lands to be surveyed under this Act;

and may require any occupant of land to maintain and keep in marks.

repair such marks or any boundary-marks,

until any survey-operation shall be concluded and a final award given as to any disputed boundary, or

until permanent boundary-marks may be erected in lieu thereof as

hereinafter provided.

15. The Collector may at any time cause to be erected on any land Collector which is to be, or which has been, surveyed under this Act, permanent may erect boundary-marks of such materials, and in such number and manner, as boundary-he may determine to be sufficient to distinguish the boundaries of the marks. estates, tenures, mauzas or fields for which the same are to be erected:

Provided that, seven days before he proceeds to the erection of any specification permanent boundary-marks, the Collector shall, for the information of of marks and estimate all concerned, cause to be posted in his office, and in the mal-cutcherry of cost to be or at some other convenient place on every estate concerned, a specifica-posted. tion of the number and character of the marks which he proposes to erect on the estate and an estimate of their cost.

16. All expenses incurred by the Collector in erecting temporary or Apportion permanent boundary-marks under this Act shall, in manner hereinafter expenses.

(Secs. 17-20.)

provided, be apportioned among, and levied from, the zamindars and tenure-holders on their estates:

Provided that no tenure-holder shall be liable to pay any portion of the expenses incurred by the erection of boundary-marks on an estate, unless some portion of his tenure is situated within fifteen hundred feet of some such boundary-mark.

Rent-free of tenure.

17. All lands held without payment of rent, not being entered on deemed part the Collector's register of revenue-free tenures of the district, shall, for the purposes of this Act, be deemed to form a part of the tenure within the local boundaries of which they may be included; and if they be not included within the local boundary of any tenure, then to be a part of the estate within the local boundaries of which they are included, and if they be not included within the local boundaries of any one estate, then to be a part of such conterminous estate as the Collector in whose district such conterminous estate is situated shall, by an order under his seal, appoint:

Provided that no rent-free holding of which the annual value is less than five rupees shall be liable to pay any portion of the expenses of erecting boundary-marks under this Act.

Procedure when occupant fails boundarymark.

18. If any occupant on whom a requisition has been made under section 14 fails to maintain or keep in repair any temporary boundaryto maintain mark, the Collector may maintain, keep in repair or restore any such boundary-mark, and the expenses thereby incurred shall be recovered as provided in section 57 from the person so failing to maintain or keep in repair any such boundary-mark.

Zamindar, etc., bound to preserve boundarymarks and give notice to Collector when injured.

19. Every zamindar, tenure-holder and farmer of land shall be legally bound to preserve, as far as lies in his power, such of the permanent boundary-marks lawfully erected on his estate, tenure or farm, or on the boundary between his estate, tenure or farm, and any other estate, tenure or farm, as may be assigned to him in that respect entirely, or jointly with other persons, under the provisions of section 29, and shall give immediate notice to the Collector if any such marks are injured, destroyed or removed, or require repairs.

Collector may re-erect injured boundarymarks and recover expenses from zamindar. etc.

20. Whenever it shall come to the notice of the Collector that any permanent boundary-mark erected under the provisions of this Act has been injured, destroyed or removed, or requires repairs, the Collector may cause such boundary-mark to be re-erected, restored or repaired, and may recover any expenses incurred in respect of such re-erection, restoration or repair, in such proportions as he shall think fit, from the zamindars and tenure-holders to whom such boundary-mark may have been assigned in that respect under the provision of section 29; and all such expenses shall be recoverable as provided in section 57.

(Secs. 21-25.)

21. Nothing contained in this Act shall be held to prohibit the Collector Collector from causing any temporary or permanent marks to be erected, may cause boundary. maintained or repaired by any occupant of land under the directions of mark to be the said Collector, and with the consent of such occupant.

The Collector shall repay to such occupant the expenses incurred in land with his such erection or repair, and such expenses shall be apportioned and consent. recovered as provided in Part IV.

PART IV.

OF THE APPORTIONMENT AND RECOVERY OF EXPENSES.

22. Upon the completion of the erection of boundary-marks on any Collector to tract of land of which the survey may have been ordered, or on any con-prepare venient portion thereof, the Collector shall forthwith prepare a statement expenses in of all expenses incurred in respect of such boundary-marks.

respect of

- 23. Such statement shall show the total number of marks of each Contents of description which have been erected on such tract or portion of such statement. tract, the aggregate cost of erecting all the marks of each description. the names of the estates and mauzas within, or on the boundaries of, which any marks have been erected, and the total number of marks of each description erected within or on the boundary of each estate.
- 24. Upon the completion of such statement the Collector shall Collector to provisionally apportion the aggregate expenses of erecting the marks apportion cost of erectamong the estates specified, with reference to the number of boundary- ing marks marks of each description which have been erected within or on the among estates boundary of each estate.

25. So soon as the provisional apportionment shall have been made Notice to be as required by the last preceding section, the Collector shall cause a notice served. to be served on the zamindar of every estate on which the expenses have been apportioned—

- (a) specifying the sum which has been apportioned on his estate, and, as far as can be calculated, the sum which he will be required to pay on account of the service of notices on him under this section and section 29;
- (b) informing him that the said statement is open to inspection in the office of the Collector;
- (c) calling on him to appear in person, or by agent properly authorized, at the office of the Collector on a date to be specified in the notice (not being less than two months after the issue of the notice), on which date the Collector will proceed to consider any objections which may be made to the provisional apportionment of expenses:

(Secs. 26-28.)

- (d) warning him that if he does not appear on the date fixed in pursuance of the notice, he will be deemed to have waived all objections to the share of the expenses apportioned to his estate;
 - and (unless as otherwise hereinafter provided in sections 31, 32 and 33);
- (e) informing him that, under this Act, he is entitled to recover a portion of the amount which shall be finally made payable in respect of his estate under section 26, from such tenure-holders on his estate as are made liable to bear a portion of such expenses by sections 16 and 17 (of which sections a copy shall be annexed to the notice); and that in order to enable the Collector to apportion the said amount among the said tenure-holders, he may give in a list of all such tenures, as defined in this Act, held directly from him, with a specification of the number of boundary-marks of each description which are erected within or on the boundary of each tenure;
- (f) and warning him that if he fails to give in a list of tenures as aforesaid on or before the said date, he will be deemed to have given up all claim to recover from the tenureholders any part of the amount for which he may be held liable under section 26.

Collector to make final apportionment.

26. On the date fixed in such notice the Collector shall proceed to consider all objections which may be made to the provisional apportionment, and to make such final apportionment of the expenses as shall seem to him fit.

In making such final apportionment the costs of serving all notices under section 25 shall be distributed rateably among the estates concerned, in proportion to the share of the expenses of erecting boundary-marks which may be apportioned to each estate; and the amount so finally apportioned as payable in respect of each estate, together with the costs of serving notices, rateably distributed as aforesaid, shall be due to the Collector from the zamindars of such estates.

Collector may postpone final apportionment.

- 27. Notwithstanding anything contained in the last preceding section, the Collector may postpone the final apportionment if it shall appear to him that a notice under section 25 has not been served on the zamindar of any estate which should be made liable for a portion of the expenses, or for any other sufficient reason.
- 28. Any zamindar failing to appear on the date fixed in the notice served on him under section 25 will be deemed to have waived all objections to the payment of the amount apportioned to his estate, and will not be entitled to prefer any objections thereto on any subsequent date;

Zamindar failing to appear deemed to have waived objections. (Secs. 29-31.)

and any zamindar failing to give in a list of tenures (when called upon under section 25 to give in such list), on or before such date, will be deemed to have given up all claim to recover from the tenure-holders any part of the amount which may have been apportioned as payable in respect of his estate under section 26.

29. So soon as the expenses shall have been finally apportioned Collector to under section 26 among the estates concerned as hereinbefore provided, issue notice specifying the Collector shall issue a notice in respect of every estate, specifying amount the amount finally apportioned as payable in respect of the estate, and finally requiring the zamindar to pay such amount to the Collector, together apporwith the costs of serving such notice, within one month of the issue of tioned. the notice.

If such amount be not paid to the Collector within such period, the same, with interest, at such rate, not exceeding six per centum per annum, as the Lieutenant-Governor may from time to time determine, may be levied as provided in section 57.

The notice issued under this section shall assign to the zamindar, or Notice shall to the zamindar jointly with tenure-holders, the boundary-marks which assign they are legally bound to preserve under the provisions of section 19 boundary-marks which and in respect of which they will be held liable to pay the costs of zamindars re-erection, maintenance and repair, under the provisions of section 20. are bound

30. If the zamindar of any estate shall give in a list of tenures, as Collector to referred to in section 25, with an application to the Collector to appor- apportion tion between his estate and the tenures the amount which has been zamindar apportioned as payable in respect of his estate as aforesaid, the Collector and tenureshall proceed to make a provisional apportionment of the said amount holders. between the zamindar and the tenure-holders, to serve notices on the said tenure-holders in the manner provided in section 25, and to make a final apportionment among the said zamindar and tenure-holders in the manner provided in sections 26 and 27; and the provisions of section 28 shall be applicable to such tenure-holders:

Provided that no separate notice shall be served under this section No separate in respect of the provisional or final apportionment of the sum payable respect of in respect of any tenure, if such sum be less than two rupees; but in apportionrespect of all such sums it shall be sufficient to publish a list showing ment of the sums apportioned as payable.

sum less

Such list shall be published by being posted at the office of the rupees. subdivisional officer and at a conspicuous place in some village within which lands appertaining to the tenure are situate.

31. Notwithstanding anything in this Part contained, whenever the Summary Collector may consider that he has sufficient information (whether apportionment derived from papers compiled for the purposes of the road-cess, from between inquiries made in the course of proceedings under this Act, or otherwise) zamindar

and tenureholders.

(Secs. 32-34.)

to enable him in a summary way to make an apportionment of any expenses recoverable under this Act in respect of any estate, between the zamindars of, and the holders of, tenures in such estate, the Collector may, as soon as possible after he shall have made a provisional apportionment under section 24 of the sum payable in respect of such estate, and without calling on the zamindar to give in any list of tenures as provided in clause (e) of section 25, proceed to make a provisional apportionment between the zamindars and the tenure-holders of such estates of the sum which has been provisionally apportioned under section 24 as payable in respect of the estate.

Notice to zamindar when provitionment made summarily.

32. Whenever any provisional apportionment of the sum payable between the zamindars and the tenure-holders may have been made sional appor-summarily, as provided in the last preceding section,

the notice to be served on the zamindar under section 25 shall inform the zamindar, in addition to the particulars specified in clauses (a), (b), (c) and (d) of the said section, and instead of those specified in clauses (e) and (f).

that under this Act he is entitled to recover a portion of the amount which shall be finally apportioned as payable in respect of his estate under section 26 from the tenure-holders on his estate; and

that the Collector has made a provisional apportionment of the said sum between the zamindar and tenure-holders according to a list which shall be annexed to the said notice:

and shall warn him-

that if he fails to prefer any objection to such provisional apportionment on or before the date specified, he will be deemed to have given up all right to prefer any such objection at any future time; and

that the Collector will proceed to make such apportionment final, or to make any modifications in it which he may think fit:

Provided that the sum finally made payable by the zamindar shall not exceed the sum apportioned upon him in the said provisional apportionment between the zamindars and the tenure-holders.

Procedure on provisional apportion. ment.

33. As soon as a provisional apportionment between the zamindar and the tenure-holders shall have been made summarily as provided in section 31, the Collector shall proceed to serve notices on the tenureholders concerned in the manner provided in section 30, and to do all other things as if the said provisional apportionment upon tenure-holders had been made on a list given in by the zamindar under section 30.

Mode of apportionment among tenures.

34. In apportioning the amount among the zamindar and the tenure-holders the Collector shall first deduct such sum as he shall consider to be fairly payable by the zamindar in respect of lands not included in any tenure, and in respect of his interest in lands which are included in tenures; and in apportioning the remainder among the (Secs. 35-37.)

tenures he shall take into consideration the number of pillars erected within or on the boundary of each tenure, the extent of each tenure, and the distance at which it is situated from the boundary-marks; but no tenure shall be made liable for any portion of the sum so apportioned, unless some part of it be situated within fifteen hundred feet from some boundary-mark.

35. So soon as the final apportionment among tenure-holders under Notice of section 30 shall be completed, the Collector shall cause to be issued apportionnotices to each of the said tenure-holders stating the amount payable respect of in respect of each of their tenures, with interest (if any) calculated at tenures. the annual rate of six per centum from the date on which the zamindar paid to the Collector the sum which was apportioned on his estate under section 26, and the cost of serving upon the tenure-holder the notice under this section and calling upon him to pay the total amount so due to the zamindar of the estate of which the tenure is a part, within one month of the date of the notice:

Provided that no separate notice shall be served under this section No separate on any tenure-holder who is required to pay a sum of less than two tenurerupees as his share of the expenses apportioned under this Act; but in holder respect of such sums it shall be sufficient to publish a list in the manner pay less prescribed by section 30, and no costs incurred in respect of the publica-than two tion of any such list shall be recoverable from any person mentioned rupees. therein as liable to pay less than two rupees.

- 36. Notwithstanding anything contained in section 35, the Collector Collector not shall not issue the notices therein mentioned to the tenure-holders until to issue notices to the zamindars concerned shall have deposited with the Collector the full tenureamount of the costs of serving all the notices, and of publishing the zamindars lists as required by that section.
- 37. The provisions of sections 25, 26, 27, 28, 29, 30, 34 and 35 shall Apportion be applicable, as far as possible, to every case in which any tenure-ment holder who has been made liable for the payment of any share of tenureexpenses under this Act may apply to the Collector to apportion the holder and amount for which he has been made liable between himself and the subordinate holders of subordinate tenures direct from himself;

and the provisions of sections 31, 32 and 33, regarding the procedure for making a provisional apportionment in a summary way between a zamindar and the tenure-holders on his estate, shall be applicable, as far as possible, to the provisional apportionment of expenses between the holder of a tenure and the holders of under-tenures within his tenure:

Provided always that no such apportionment shall be made in respect of raiyats who have a right of occupancy only, and whose rent is not fixed in perpetuity.

have deposited costs.

tenure.

(Secs. 38-44.)

Recovery of sums payable to zamindar or tenureholder.

38. Every *zamindar* or tenure-holder to whom any sum is payable under the preceding sections may recover the same with interest as aforesaid in the manner provided by any law for the time being in force for the recovery of arrears of rent in respect of the tenure for which the sum is due.

Recovery of sums expended by Government. **39.** The provisions of this Part shall apply to all sums expended by the Government since the first day of November 1874, in erecting boundary-marks.

PART V.

BOUNDARY-DISPUTES.

Procedure in case of disputes as to boundary.

40. If it shall come to the notice of the Collector, in the course of a survey under this Act, that a dispute exists as to any boundary which should be surveyed, the Collector, after holding such inquiry as he may deem necessary, may determine such boundary as hereinafter provided.

Mode of determining boundary. Force of Collector's order.

41. The Collector shall determine the boundary according to actual possession, and cause it to be secured by boundary-marks;

and the order of the Collector under this section shall, until it be reversed or modified by competent authority, have the force of an order of any Civil Court declaring the parties to be in possession of the land in accordance with the boundary as determined by the Collector.

Power of Collector to take possession of land in dispute. **42.** If, after holding the necessary inquiry, the Collector is unable to discover which party was in possession of the disputed land when he instituted the inquiry under this section, the Collector may take possession of the land in dispute, and retain possession thereof until some party shall have established his right to the said land.

Power to refer to arbitration.

43. Whenever the Collector thinks it necessary to decide a dispute as to any boundary under the last preceding section, he may, with the consent of the parties concerned, refer the same to arbitration.

The procedure laid down in Chapter VI of Act 8 of 1859[1] (the Code of Civil Procedure) shall, so far as may be practicable, be applicable to disputes so referred to arbitration.

Relaying boundary previously determined by court or by revenue survey.

44. If the boundary regarding which the dispute exists as mentioned in section 40 shall at any previous time have been determined by any Court of competent jurisdiction, or shall have been laid down and shown on a map in the course of any previous revenue-survey or settlement, and no objection to the boundary as then laid down and

^[1] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to s. 89 of, and Sch. II to, the latter Code—see s. 158 thereof.

(Sec. 45.)

mapped shall have been preferred before any authority competent to decide on such objection;

whenever the dispute relates to the boundary of an estate which is liable for revenue, or to any other boundary by which the interest of the Government may be affected, the Collector shall,

and whenever the dispute relates to any other boundary, the Collector may, if he thinks fit.

relay, as nearly as may be possible, the boundary as previously determined or laid down and shown on the map, and cause such boundary to be shown on the survey-map, with an explanatory note to the same:

Provided that the relaying and record of a boundary by the Collector under this section shall not affect the possession of any land by any party, and shall be in addition to the determination and record of the boundary according to actual possession required by section 41.

Nothing contained in this section shall be held to prohibit the Col- Collector lector from deviating from a boundary as held by actual possession or may deviate from boundary as held by actual possession or may deviate as shown on a former map, and laying down a new boundary, if all dary if the parties concerned agree to such new boundary, on the ground that parties agree. the boundary held by actual possession, or as shown on the former map, was incorrect, and if it appears to the Collector that there is no objection to the adoption of such new boundary.

The reason for every such deviation shall be recorded in the Collector's proceedings.

45. If it shall come to the notice of the Collector at any time, or Power of in any manner, that a doubt or dispute exists in respect to any boundary-

(a) which has at any time been determined by a competent Court; dispute as to boundary or

(b) which has been laid down and shown on a map, in the course of a previous revenue-survey or settlement, or other proceeding of a revenue-officer for any special purpose, and against which no objection has been preferred to any authority competent to decide upon such objection; or

(c) which has been laid down by survey under this Act,—

the Collector may, if he thinks it desirable for any reason that the boundary so determined or laid down shall be relaid, proceed to relay the boundary in the manner prescribed in section 44 of this Act,

and for the purpose of so relaying the boundary he may make any inquiries and surveys which may be necessary, and such inquiries and surveys shall be deemed to be proceedings under section 6, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of inquiries and surveys under that section.

Collector in case of doubt or determined by Court or laid down by Survey.

(Secs. 46-48.)

In certain cases Collector may cause marks to be erected. **46.** Whenever the Collector shall have determined a boundary which was in dispute, and the order shall have become final,

and whenever a boundary which has been supplied by the survey officers, or has been determined under this Act, has been altered by a decree of any Civil Court which has become final,

and whenever it shall come to the notice of the Collector that any boundary has been determined by a competent Court or authority,

the Collector may cause such marks as he may think fit to be erected in order to secure the boundary permanently, and the provisions of Parts III and IV shall, so far as is possible, be applicable to boundary-marks which are erected under this section and to the apportionment of the cost thereof.

PART VI.

MISCELLANEOUS.

Joint
zamindars
subject to
every liability imposed
on single
zamindars.

47. Whenever any estate or tenure is held jointly by two or more zamindars or tenure-holders, all such zamindars and tenure-holders shall be jointly and severally liable in respect of every liability imposed on zamindars or tenure-holders respectively by this Act,

and any shareholder in any estate or tenure who may have paid the amount finally apportioned to such estate or tenure may recover from his co-sharers such sums as may be payable in respect of their shares as arrears of rent, or may take credit for such sums in any adjustment of accounts between himself and his co-sharers.

Service of notice.

- **48.** Every notice in and by this Act required to be served on any person may be served—
 - (1) by delivering the same to the person to whom it is directed, or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to a general agent of the person to whom such notice is directed; or
 - (2) by sending a registered letter containing such notice directed to the said person at his usual place of abode, or to the place where he may be known to reside; or
 - (3) by posting a copy of the notice at any mál-cutcherry of the estate or tenure of the person to whom the notice is directed; or, if no such mál-cutcherry be found, on some conspicuous place on the said estate or tenure to which such notice relates, and by delivering, in the case of estates paying their annual revenue by four instalments, another

(Secs. 49-52.)

copy thereof to any agent who shall have paid an instalment of revenue next after the preparation of such notice.

In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

49. No proceedings under this Act shall be affected by reason of No proceedany mistake in the name of any person thereby rendered liable to pay ings under affected any sum of money, or in the description of any estate or tenure or land by mistake in respect of which he is rendered liable to pay, or by reason of any or misdes-orthon informalist. other informality, provided the directions of this Act be in substance and effect complied with; and no proceedings under this Act shall be affected by reason of the omission to serve any notice on any zamindar whose name is not recorded on the Collector's registers as owner of the estate in respect of which the notice is required to be served.

50. For the purpose of any inquiry under this Act the Collector shall, Power of in addition to every power conferred specially by this Act, have power Collector to to summon and enforce the attendance of witnesses and compel the attendance production of documents by the same means (as far as may be), and in of witnesses. the same manner, as is provided in the case of a Court under the Code of Civil Procedure. [1]

of 1859.

51. If any person shall fail to comply with a requisition contained Daily fine in any special notice served under section 7 of this Act, or in any notice for failure to comply served for the purpose of any inquiry under Part V of this Act, within with requisithe time specified in such notice, the Collector may impose upon him tion in notice. such daily fine as he may think fit, not exceeding fifty rupees, and such fine shall be payable daily until the requisition is complied with; and the Collector may proceed from time to time to levy any amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending:

Provided that whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

52. Any person, being bound by the provisions of section 19 to give Penalty for notice to the Collector in respect of any boundary-mark having been not giving injured, destroyed or removed, or requiring repairs, who shall fail to injury to give such notice, shall be liable to a fine not exceeding one hundred boundaryrupees, to be imposed by order of the Collector.

^[1] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. This latter Act has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code-see's. 158 thereof.

(Secs. 53-58.)

Penalty for removing boundarymarks.

53. Any person convicted before a Collector of wilfully erasing, removing or damaging any boundary-mark (not being a land-mark) fixed by the authority of a public servant within the meaning of section 434 of the Indian Penal Code which has been lawfully erected, may 45 of 186 be ordered by the convicting officer to pay such sum, not exceeding two hundred rupees, for each mark so erased, removed or damaged, as the said officer may think fit, in addition to such sum as may be necessary to defray the expense of restoring the boundary-mark so erased, removed or damaged.

Collector may award portion of fine to informer. Levy of

fine.

- 54. The Collector may award any portion of a fine imposed under either of the two last preceding sections and which may be realized to any person who may have given information leading to the imposition of the fine.
- 55. A fine under sections 51, 52, and 53 may be levied, as far as may be practicable, in the manner provided in section 307 of the Code of Criminal Procedure; [1] but if no moveable property belonging to 10 of 187 the person from whom the fine is due is found in the district within which the order was passed, then such fine may be levied as if it were an arrear of revenue.

When person removing boundarybe found. Collector may repair.

56. Whenever the person erasing, removing or damaging any boundary-mark cannot be discovered, or if for any other reason it is found impracticable to recover from him the sum which he has been so mark cannot ordered to pay, the boundary-mark shall be restored or repaired by the Collector, and the expenses thereby incurred shall be recovered from the occupants of such of the conterminous lands, and in such proportions as to the Collector may seem fit.

Every amount due deemed a demand.

57. Every amount which may become due to the Collector under the provisions of this Act in respect of any expenses incurred, or of any notices served, or of any costs payable by any party in an appeal, shall be deemed to be a demand * * * *[2].

Appeal against orders. Supervision of proceedings.

58. Except as provided in sections 59 and 60, no appeal shall lie, as of right against any order passed under this Act by any officer; but

the proceedings and orders of Assistant Superintendents and of Deputy Collectors under this Act shall be subject to the supervision and control of the Superintendent of Survey or Collector;

As to the application of s. 57 of the present Act, see also s. 20, ante, p. 176.

^[1] Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898); and this reference should now be taken to be made to ss. 386, 387 and 389 of the latter Act-see s. 3 thereof.

^[2] The words and figures "under s. 2 of Bengal Act 7 of 1868 (an Act to make [2] The words and agures "under s. 2 of Bengai Act i of 1000 (an Act to make to make purther provision for the recovery of arrears of land-revenue and public demands recoverable as arrears of land-revenue), and shall be leviable as such," which were repealed by the Public Demands Recovery Act, 1880 (Bon. Act 7 of 1880), are omitted. As to the recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), s. 3 (6), and Sch. I, in Vol. III of this

(Secs. 59-62.)

the proceedings and orders of the Superintendent of Survey and of the Collector, to the supervision and control of the Commissioner of the Division: and

the proceedings and orders of all officers, to the supervision and control of the Board of Revenue: [1]

Provided that the Government may order that, in the course of any Government survey under this Act, the functions of the Commissioner shall be may restrict functions of restricted to the decision of appeals under section 60, and that the Commisgeneral powers of control and supervision over the Superintendent of sioner. Survey or Collector and their subordinate officers may be exercised by the Board of Revenue[1] direct.

59. An appeal, if presented within one month of the date of the Appeal order appealed against, shall lie to the Collector or Superintendent of tain orders Survey against every order of a Deputy Collector or of an Assistant of Assistant Superin-Superintendent-

tendent or

(a) determining under section 8 the amount to be paid as the Deputy price of materials or labour supplied;

(b) determining under section 10 the amount to be paid as compensation;

(c) deciding a boundary-dispute;

(d) imposing a fine under this Act.

60. An appeal, if presented within one month of the date of the Appeal order appealed against, shall lie to the Commissioner of the Division against ceragainst every order of the Collector or Superintendent of Survey-(a) determining under section 8 the amount to be paid as value of or Supering and the supering t

of Collector Survey.

materials or labour supplied; (b) determining under section 10 the amount to be paid as compensation:

(c) determining a disputed boundary;

(d) imposing a fine of more than fifty rupees on any person:

Provided that the order appealed against under clauses (a), (b) and (c) shall not have been passed by the Collector or Superintendent of Survey on an appeal preferred against the order of a subordinate officer.

61. The Commissioner, Collector or Superintendent of Survey may Orders as to pass such orders as they shall think fit in respect of the payment of costs on appeal. costs incurred by any party in an appeal.

62. No suit shall be brought to set aside an order of a Superinten- No suit to dent of Survey, Collector, Assistant Superintendent or Deputy Collector be brought unless deciding a boundary-dispute, unless an appeal shall have been first appeal first

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913), in Vol. III of this Code.

(Sec. 63.)

preferred under section 59 or section 60, or unless the person suing was at the time when such order was passed a minor, or insane or an idiot.

Board of Revenue may lay down rules with sanction of Lieutenant-Governor.

63. With the sanction of the Lieutenant-Governor the Board of Revenue^[1] may lay down rules, not being inconsistent with this Act,—to provide for the preparation of maps and registers, and for the

to provide for the preparation of maps and registers, and for the collection and record of any information in respect of any land to be surveyed under this Act:

and generally to provide for the proper performance of all things to be done and for the regulation of all proceedings to be taken, under this Act.

All inquiries ordered to be made for the collection of information under such rules shall be deemed to be inquiries under section 6, and the Collector shall exercise in respect thereof all powers which he may exercise in respect of inquiries under that section.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913), in Vol. III of this Code.

BENGAL ACT 1 OF 1876.

(THE BENGAL MUHAMMADAN MARRIAGES AND DIVORCES REGISTRATION ACT, 1876.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Local extent.
- 2. Interpretation.
- 3. Lieutenant-Governor may grant licenses to register.
- 4. Muhammadan Registrars to use seals.
- 5. Government to provide seal and books.
- 6. Muhammadan Registrar to keep registers.
- 7. Entries to be numbered.
- 8. Applications, by whom to be made.
- 9. Duties of Muhammadan Registrar on application.
- 10. Muhammadan Registrar may receive gratuity.
- 11. Entries, by whom to be signed.
- 12. Copies of entry to be given to parties.
- 13. Index to be kept.
- 14. Particulars to be shown in index.
- 15. Index may be inspected and copies of entries in registers taken.
- 16. Fees for searches and copies.
- 17. Muhammadan Registrar to be subject to control of District Registrar.
- 18. Inspector-General of Registration to exercise general superintendence
- 19. Rules to be approved by Lieutenant-Governor and published in Gazette.
- 20. Refusal to register to be recorded.
- 21. Appeal against refusal to register.
- 22. Copies of entries to be sent monthly to Registrar of district.
- 23. Registers to be given up.
- 24. Lieutenant-Governor may prescribe rules.
- 25. Muhammadan Registrar a public officer.
- 26. Saving clause.

SCHEDULE.—Form A, Book I.

SCHEDULE.—Form B, Book II.

SCHEDULE.-Form C. Book III.



BENGAL ACT 1 OF 1876.

(The Bengal Muhammadan Marriages and Divorces Registration ACT, 1876.)[1]

(19th January, 1876.)

An Act to provide for the voluntary registration of Muhammadan Marriages and Divorces.

Whereas it is expedient to provide for the voluntary registration of Preamble. marriages and divorces among Muhammadans; It is enacted as follows :---

1. This Act shall commence and take effect in those districts in the Local extent. provinces subject to the Lieutenant-Governor of Bengal[2] to which the said Lieutenant-Governor shall extend it by an order[3] published in the Calcutta Gazette; and thereupon this Act shall commence and take effect in the districts named in such order, on the day which shall be in such order provided for the commencement thereof.

2. In this Act, unless there be something repugnant in the subject Interpretaor context.—

"Muhammadan Registrar" means any person who is duly autho-"Muhamrized under this Act to register marriages and divorces:

madan Registrar."

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1873, Pt. IV, p. 1526; and for Proceedings in Council, see ibid, 1873, Supplement, p. 1586; ibid, 1875, Supplement, pp. 1, 55, 119, 175, 407, 437 and 1358.

LOCAL EXTENT.—This Act extends only to districts notified under s. 1. For a list of districts so notified, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division—see Vol. IV, Pt. III; but its application is barred in—the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code;

the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of

1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

[2] This includes the present Province of Bihar and Orissa except the district of

Sambalpur. [3] For a list of orders made under s. 1, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 3-7.)

"Inspector-General of Registration ";
" Registrar."

"Inspector-General of Registration" and "Registrar" respectively mean the officers so designated and appointed under the Indian Registration Act, 1871,[1] or other law for the time being in force for the 8 of registration of documents:

" District."

"district" means a district formed under the provisions of the Indian Registration Act, 1871:[1]

" Pardanashin."

" parda-nashin" means a woman who, according to the custom of the country, might reasonably object to appear in a public office.

Lieutenant-Governor may grant licenses to register.

3. It shall be lawful for the Lieutenant-Governor to grant a license to any person, being a Muhammadan, authorizing him to register Muhammadan marriages and divorces which have been effected within certain specified limits, on application being made to him for such registration; and in like manner it shall be lawful for the said Lieutenant-Governor to revoke or suspend such license:

Provided that no more than two persons shall be licensed to exercise the said functions within the same limits: and provided further that, when two persons are so licensed to act within the same limits, the one shall be a member of the Sunni, and the other of the Shia, sect.

Muhammadan Registrars to use seals.

4. Every Muhammadan Registrar shall use a seal bearing the following inscription in the Persian character and language: "The seal of the Muhammadan Registrar of

Government to provide seal and books.

5. The Lieutenant-Governor shall supply for the office of every Muhammadan Registrar the seal and the books necessary for the purposes of this Act.

The pages of such books shall be consecutively numbered in print, and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

Muhammadan keep registers.

6. Every Muhammadan Registrar shall keep up the following Registrar to register-books:

> Book I.—Register of marriages in the Form A contained in the Schedule to this Act.

> Book II.—Register of divorces other than those of the kind known as Khula, in the Form B contained in the Schedule to this Act.

> Book III.—Register of divorces of the kind known as Khula, in the Form C contained in the Schedule to this Act.

Entries to be numbered.

7. All entries in each register prescribed by the last preceding section shall be numbered in a consecutive series, which shall commence

^[1] Act 8 of 1871 was repealed and re-enacted by Act 3 of 1877, which again has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), printed in General Acts, 1898-1909, Ed. 1928, p. 431 and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 344.

(Secs. 8-10.)

and terminate with the year, a fresh series being commenced at the beginning of each year.

8. Every application for registration under this Act shall be made Applications, by whom to be made. to the Muhammadan Registrar orally as follows:—

if the application be for the registration of a marriage—

by the parties to the marriage jointly: provided that if the man, or the woman or both, be minors, application shall be made on their behalf by their respective lawful guardians: and provided further that, if the woman be a parda-nashin, such application may be made on her behalf by her duly authorized vakil:

if the application be for registration of a divorce other than of the kind known as Khula-

by the man who has effected the divorce:

if the application be for the registration of a divorce of the kind known as Khula-

by the parties to the divorce jointly: provided that, if the woman be a parda-nashin, such application may be made on her behalf by her duly authorized vakil.

9. On application being made to a Muhammadan Registrar for Duties of registration under this Act of a marriage or divorce within one month madan of the marriage or divorce being effected, and not otherwise, and on Registrar payment to him of a fee of one rupee, the Muhammadan Registrar shall— on application.

- (a) satisfy himself whether or not such marriage or divorce was effected by the person or persons by whom it is represented to have been effected:
- (b) satisfy himself as to the identity of the persons appearing before him and alleging that the marriage or divorce has been effected:
- (c) in the case of any person appearing as representative of the man or woman (whether he appears as guardian or vakil), satisfy himself of the right of such person to appear.

If the Muhammadan Registrar be satisfied on the above points, and not otherwise, he shall make an entry of the marriage or divorce in the proper register:

Provided that no such entry shall be made otherwise than in the presence of every person who, by section eleven of this Act, is required to sign such entry.

10. Nothing in the preceding section shall be held to prohibit a Muham-Muhammadan Registrar from receiving a gratuity in excess of the madan prescribed fee of one rupee, when such gratuity is voluntarily tendered. may receive 6 L, D,

gratuity,

(Secs. 11-13.)

Entries by whom to be signed.

- 11. Every entry in a register kept under this Act shall be signed as follows:—
- if the entry be of a marriage in a register in the Form A contained in the Schedule to this Act,—
 - (1) by the parties to the marriage, or, if either or both of them be minors, by their lawful guardians respectively: provided that, if the woman be a parda-nashin, the entry may be signed on her behalf by her duly authorized vakil;
 - (2) by two witnesses who were present at the marriage-ceremony;
 - (3) in cases in which the woman is represented by a vakil—by two witnesses to the fact of the vakil having been duly authorized to represent her;
 - (4) by the Muhammadan Registrar;

if the entry be of a divorce other than the kind known as Khula in a register in the Form B contained in the Schedule to this Act,—

- (1) by the man who has effected the divorce;
- (2) by the witness who identifies the man who has effected the divorce:
- (3) if the man be of the Shia sect—by two witnesses to the divorce being effected;
- (4) by the Muhammadan Registrar;

if the entry be of a divorce of the kind known as Khula in a register in the Form C contained in the Schedule to this Act,—

- (1) by the parties to the Khula: provided that, if the woman be a parda-nashin, the entry may be signed on her behalf by her duly authorized vakil;
- (2) by the person who identifies the man;
- (3) by the person who identifies the woman;
- (4) if the application for registration has been made by a vakil on behalf of the woman—by two witnesses to the fact of the vakil having been duly authorized to represent her;
- (5) if the man be of the Shia sect—by two witnesses to the divorce being effected;
- (6) by the Muhammadan Registrar.

Copies of entry to be given to parties.

12. On completion of the registration of any marriage or divorce, the Muhammadan Registrar shall deliver to each of the applicants for registration an attested copy of the entry; and for such copy no charge shall be made.

Index to be kept.

13. In every office in which any register hereinbefore mentioned is kept, there shall be prepared a current index of the contents of such register; and every entry in such index shall be made, so far as practicable, immediately after the Muhammadan Registrar has made an entry in any such register.

(Secs. 14-18.)

14. The index mentioned in the last preceding section shall contain Particulars the name, place of residence and father's name of each party to every in index. marriage or divorce, and the date of registration.

It shall also contain such other particulars, and shall be prepared in such form, as the Lieutenant-Governor may direct.

15. Subject to the previous payment of the fees prescribed, the Index may index, whether it be in the office of the Muhammadan Registrar or of be inspected and copies the Registrar of the district, and the copies of entries in such index, of entries which are filed in the office of the Registrar of the district under the in registers provisions of section twenty-two of this Act, shall be at all times open to inspection by any person applying to inspect the same; and copies of entries in any of the registers, and of the certified copies of such entries, which are filed in the office of the Registrar of the district under section 22 of this Act, shall be given to all persons applying for such copies.

Such copies shall be signed and sealed by the Registrar of the district or by the Muhammadan Registrar, as the case may be.

16. Every Registrar of a district and every Muhammadan Registrar Fees for shall, for the purposes of this Act, be entitled to levy the following and copies. fees:-

for every search or permission to search in any index or register under his charge-four annas:

for every certified copy of any entry in a register other than the first copy referred to in section twelve of this Act—one rupee.

17. Every Muhammadan Registrar shall perform the duties of his Muhammaoffice under the superintendence and control of the Registrar, in whose dan Registrar to be district the office of such Muhammadan Registrar is situate.

subject to

In the town of Calcutta every Muhammadan Registrar shall perform control of district the duties of his office under the superintendence and control of the Registrar. Inspector-General of Registration.

Every Registrar, and in the town of Calcutta the Inspector-General of Registration, shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act which he considers necessary in respect of any act or omission of any Muhammadan Registrar subordinate to him.

18. The Inspector-General of Registration shall exercise a general Inspectorsuperintendence over offices of all Muhammadan Registrars, and shall General of Registrahave power from time to time to frame rules[1] consistent with this Act, tion to for the guidance of the said Muhammadan Registrars and the regulation exercise of their offices generally.

superintendence.

^[1] For rules made under ss. 18 and 24, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 19-24.)

Rules to be approved by Lieutenant-Governor and Gazette.

19. All rules framed in accordance with the last preceding section shall be submitted to the Lieutenant-Governor for approval, and after they have been approved they shall be published in the official Gazette, published in and shall then have the same force as if they were inserted in this Act.

Refusal to register to be recorded.

20. Every Muhammadan Registrar refusing to register a marriage or divorce shall make an order of refusal, and record his reasons for such order in a book to be kept for that purpose.

Appeal against refusal to register.

21. An appeal shall lie against an order of a Muhammadan Registrar refusing to register a marriage or divorce, to the Registrar to whom such Muhammadan Registrar is subordinate, if presented Registrar within twenty days from the date of the order, and the Registrar may reverse or alter such order; and the order passed by the Registrar on appeal shall be final.

Copies of entries to be to Registrar of district.

22. Every Muhammadan Registrar shall, at the expiration of every sent monthly month, send certified copies of all entries made by him during the month in the registers mentioned in section six of this Act, and also of the entries which have been made in the index referred to in sections thirteen and fourteen of this Act, to the Registrar of the district within which such Muhammadan Registrar has been authorized to act, and the Registrar, on receiving such copies, shall file them in his office.

Registers to be given up.

23. Every Muhammadan Registrar shall keep safely each register until the same shall be filled, and shall then or earlier if he shall leave the district or cease to hold a license, make over the same to the Registrar of the district for safe custody, or to such other person as the Registrar may direct.

Lieutenant-Governor may prescribe rules.

- 24. The Lieutenant-Governor may from time to time prescribe such rules[1] as he thinks fit, provided that such rules be not inconsistent with any provision of this Act,-
 - (a) for determining the qualifications to be required from persons to whom licenses under section three of this Act may be granted;
 - (b) for regulating the attendance of Muhammadan Registrars at the celebration of marriages, and their remuneration for such attendance;
 - (c) for regulating the grant of copies by Registrars and Muhammadan Registrars;
 - (d) for regulating the payment by the Muhammadan Registrars of the cost of the seals, forms of registers, stationery and any other articles which may be supplied to them by the Government:

^[1] For rules made under ss. 18 and 24, see Bihar and Orissa Local Statutory Bules and Orders, Vol. I, Pt. VI.

(Secs. 25-26. Schedule.)

- (e) for regulating the application of the fees levied by Registrars of districts and Muhammadan Registrars under this Act; and
- (f) for regulating such other matters as appear to the Lieutenant-Governor necessary to effect the purposes of this Act.

The Lieutenant-Governor may from time to time cancel or alter any such rules.

25. Every Muhammadan Registrar shall be, and be deemed to be, Muhama public officer, and his duties under this Act shall be deemed to be madan Registrar public duties.

public officer.

Saving

- 26. Nothing in this Act contained shall be construed to—
 - (a) render invalid, merely by reason of its not having been clause. registered, any Muhammadan marriage or divorce which would otherwise be valid:
 - (b) render valid, by reason of its having been registered any Muhammadan marriage or divorce which would otherwise be invalid:
 - (c) authorize the attendance of any Muhammadan Registrar at the celebration of a marriage, except at the request of all the parties concerned:.
 - (d) affect the religion or religious rites and usages of any of His Majesty's subjects in India;
 - (e) prevent any person, who is unable to write, from putting his mark instead of the signature required by this Act.

SCHEDULE.

(See sections 6 and 11.)

FORM A. BOOK I.

Register of Marriages (as prescribed by section 6 of the Act for the voluntary registration of Muhammadan Marriages and Divorces).

- 1. Consecutive number.
- 2. Name of the bridegroom and that of his father, with their respective residences.
- 3. Name of the bride and that of her father, with their respective residences.
- 4. Whether the bride is a spinster, a widow or divorced by a former husband, and whether she is adult or otherwise.
- 5. * Name of the guardian of the bridegroom (if the bridegroom be a minor) and that of the guardian's father, with specification of the guardian's residence, and of the relationship in which he stands to the bridegroom.

^{*}These columns will be blank if the bride and bridegroom, respectively, are not represented by guardians.

(Schedule.)

- 6. * Name of the guardian of the bride (if she be a minor) and that of his father, with specification of his residence, and the relationship in which he stands to the bride.
- 7. † Name of the bride's vakil and of his father, and their residences, with specification of the relationship in which the vakil stands to the bride.
- 8. † Names of the witnesses to the due authorization of the bride's vakil, with names of their fathers and residences, and specification of the relationship in which they stand to the bride.
- 9. Date on which the marriage was contracted,—to be given according to the English style and according to the era current in the district.
 - 10. Amount of dower.
- 11. How much of the dower is mu'ajjal (prompt) and how much mu'wajjal (deferred).
- 12. Whether any portion of the dower was paid at the moment. If so, how much.
- 13. Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same.
 - 14. Special conditions, if any.
- 15. Names of village or town, police-jurisdiction and district in which the marriage took place.
- 16. Name of the person in whose house the marriage-ceremony took place, and that of his father.
 - 17. Date of registration,—to be given according to the English style.

FORM B. BOOK II.

Register of Divorces, other than those of the kind known as Khula (prescribed by section 6 of the Act for the voluntary registration of Muhammadan Marriages and Divorces).

- 1. Consecutive number.
- 2. Names of the husband and of his father, and their residences.
- 3. Names of the wife and of her father, and their residences.
- 4. Date of divorce—according to the English style and according to the era current in the district.
 - 5. Description of divorce.
 - 6. Manner in which the divorce was effected.
- 7. Names of the village or town, police-jurisdiction and district in which the divorce took place.

^{*}These columns will be blank if the bride and bridegroom, respectively, are not represented by guardians.

+These columns will be blank when the bride is not represented by a vakil.

(Schedule.)

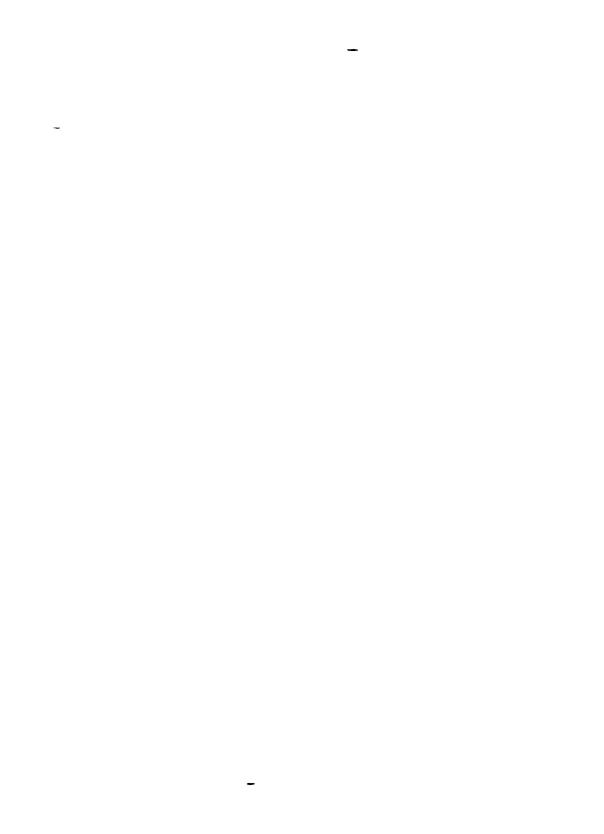
- 8. Name of the party in whose house the divorce took place, and of his father.
- 9. Names of witnesses to the divorce, if any, the names of their fathers, and their respective residences.
- 10. Name of party identifying the husband before the Muhammadan Registrar and that of his father, and their residences.
 - 11. Date of registration,—to be given according to the English style.

FORM C. BOOK III.

Register of Divorces of the kind known as Khula (prescribed by section 6 of the Act for the voluntary registration of Muhammadan Marriages and Divorces).

- 1. Consecutive number.
- 2. Name of the husband and that of his father, and their residences.
- 3. Name of the wife and that of her father, and their residences.
- 4. Date of Khula—according to the English style and according to the era current in the district.
 - 5. Amount of dower.
- 6. Whether Khula was acknowledged by the wife in person before the Muhammadan Registrar.
- 7. If so, name of the party identifying her before the Muhammadan Registrar, and that of his father, and their residences, with specification of the relationship which he bears to her, if any.
- 8. * If the Khula be acknowledged before the Muhammadan Registrar by the wife's vakil, his name and that of his father and their residences, with specification of the relationship which the vakil bears to the wife, if any.
- 9. Names of the two witnesses to the due authorization of the wife's vakil, and those of their fathers, with their residences.
- 10. Name of village or town, police-jurisdiction and district where the Khula took place.
- 11. Name of the person in whose house the Khula took place, and that of his father.
- 12. Names of the witnesses, if any, to the divorce being effected, the names of their fathers, and their residences.
- 13. Name of the person identifying the husband, and that of his father, and their residences.
 - 14. Date of registration,—to be given in the English style.

[&]quot;This column will be blank if the woman is not represented by a vakil.



BENGAL ACT 3 OF 1876.

(THE BENGAL IRRIGATION ACT, 1876.)

CONTENTS.

PART I .- PRELIMINARY.

PREAMBLE.

SECTION.

- 1. Short title. Local extent. Commencement.
- (Repealed.)
 Interpretation clause.
- 4. Exemption from Bengal Embankment Act.
- 5. Power to appoint officers.

PART II.—OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

- 6. Notification when water-supply to be applied for public purposes.
- 7. Powers of canal-officer.
- 8. Notice as to claims for compensation.
- 9. Contents of notice.
- Notice to occupiers.

 10. Power to require statements as to name and interests. Penalty for failure to comply.
- Persons required to make statements legally bound to do so.
- Damage for which compensation shall not be awarded.
 Matters in respect of which compensation may be awarded.
 Compensation for loss of tolls lawfully levied.
 - Diminution in market-value to be considered.
- 12. Compensation for loss of drinking water, 13. Limitation of claims.

- 14. Inquiry into claim and tender of compensation.
 Power to summon witnesses.
 15. Postponement of inquiry.
 16. Award in case of compensation being agreed on.
 Award to be filed and to be evidence.
 17. Collector to refer matter to Court when compensation not accepted.
- 18. Collector to record particulars in certain cases. And to place amount of compensation in deposit.
- 19. Objections to amount of compensation fixed by Collector.
 20. Procedure in making reference.
 21. Procedure on receipt of reference under section 17.

- 22. Particulars of apportionment to be specified.
- 23. Disputes as to apportionment.24. Determination of proportions.
- Appeal.
- 25. Payment of compensation.
- 26. Government not liable to further claim.
- 27. Liability of person receiving compensation not affected.
- 28. Abatement of rent on interruption of water-supply.

SECTION.

- 29. Enhancement of rent on restoration of water-supply.
- 30. Compensation when due.

Interest.

- Collector may invest amount deposited or awarded in Government securities.
- 31. No compensation in respect of prior works.

32. Service of notice.

PART III .-- OF THE MAINTENANCE OF CANALS.

Entry for inquiry.
 Power to inspect and regulate water-supply.

35. Power to enter for repairs, and to prevent accidents.
36. Notice to occupier of building, etc.

37. Compensation for damage to land.
38. Appeal from Collector's decision to Commissioner.
39. Government to provide means of crossing canals and of drainage.

Collector to certify to Government that means of crossing canals and drainage have been provided.

PART IV .- OF DRAINAGE.

- 40. Lieutenant-Governor may prohibit formation of obstructions within certain limits.
- 41. Canal-officer may issue notice to person causing obstructions.

42. Canal-officer may cause obstructions to be removed.

- 43. When drainage-works necessary, Lieutenaut-Governor may order scheme to be drawn up and carried out.
- 44. Disposal of claims to compensation.

45. Limitation of such claims.

PART V.—OF VILLAGE-CHANNELS.

46. "Person" defined.
47. Register of village-channels to be kept.

Extension or branch of village-channel to be registered. Canal officer may register as one village-channel a section including portions lying within two or more villages.
48. Person may acquire existing village-channels by agreement.
49. Construction of new village-channel.

50. Application by person desiring construction of new village-channel.

51. Procedure when canal-officer considers construction of village channel expedient. Notice to person wishing to be joint owner.

52. Collector to acquire land.

53. Procedure after construction of village-channel.

54. Canal-officer may direct transfer of village-channel.

54. Canal-oncer may direct transfer of vinage-channel.

55. Person may be admitted joint owner of existing village-channel.

56. Canal-officer to fix sums payable on transfer or acquisition of joint ownership.

57. Canal-officer may fix rent for a village-channel transferred.

58. Ownership of village-channel.

59. Obligations and rights of owner of village-channel.

60. If owner of village-channel fails to execute work or repair, canal-officer may do so.

61. Resignation of ownership.
62. Owner may transfer interest.

63. Procedure on death of owner of village-channel.
64. Procedure when person applies for registration in lieu of deceased owner.
65. Interest of owners equal, unless unequal interests registered.

66. Supply of water to person not owner.
67. Canal-officer may authorize supply.
68. Canal-officer to fix rent of village-channel.

69. Owner of village-channel receiving supply through another village-channel.
70. Instalments in which rent is payable.
71. Canal-officer to pay no more than amount collected.
72. Land acquired not to be used for other purpose.

- 73. Dues how recovered.

PART VI.-OF THE SUPPLY OF WATER.

SECTION.

74. Applications for supply of water.

75. Permission to be recorded in writing.

75A. Liability to water-rates of certain non-applicants.

76. Rules subject to conditions as to-

(a) power to stop water-supply;

(b) claims to compensation in case of failure or stoppage of supply;

(c) claims on account of interruption from other causes;

 (d) duration of supply;
 (e) sale or sub-letting of right to use canal-water; contracts for water transferable with land.

77. Canal-officer may supply water for purposes other than those of irrigation.

PART VII.-OF WATER-BATES.

78. Charge for water, how determined.

79. Liability of occupiers of lands benefitting from unauthorized use of water.

80. Liability when water runs to waste.

81. Charges recoverable in addition to penalties. 82. Power to contract for collection of canal-dues.

83. Sums payable under this Part deemed to be rent.

84. Person who distrains may be called on to produce account.

85. Arrears of water-rate deemed to be demands.

86. Sections not applying to fines.

PART VIII .-- OF JURISDICTION.

87. Settlement of disputes as to mutual rights and liabilities of persons interested in village-channel.

88. Dispute as to shares and payments.

- 89. Order passed by Collector and canal-officer to remain in force until set aside by Civil Court.
- 90. Jurisdiction as to suits arising out of powers of distraint.

91. Appeal and supervision.

92. Power to summon and examine witnesses.

PART IX .- OF OFFENCES AND PENALTIES.

93. Offences under Act.

Penalty. 94. Further offences.

Penalty.

95. Obstruction to be removed and damage repaired.

96. Persons employed on canal may take offenders into custody.

97. Saving of prosecution under other laws.

98. Compensation to person injured.

PART X .-- OF SUBSIDIARY RULES.

99. Power to make, alter and cancel rules. Publication of rules.



BENGAL ACT 3 OF 1876.

(THE BENGAL IRRIGATION ACT, 1876.)[1]

(29th March, 1876.)

An Act to provide for irrigation in the Provinces subject to the Lieutenant-Governor of Bengal. [2]

Whereas it is necessary to make provision for the construction, Preamble. maintenance and regulation of canals, for the supply of water therefrom, and for the levy of rates for water so supplied, in the provinces subject to the Lieutenant-Governor of Bengal; [2] It is hereby enacted:

PART I.

Preliminary.

1. This Act may be called the Bengal Irrigation Act, 1876; Short title.

It shall take effect in those districts in the provinces subject to the Local extent. Lieutenant-Governor of Bengal[2] to which the said Lieutenant-Governor shall extend it by an order[8] published in the Calcutta Commence-Gazette and shall commence on the day which shall be in such order provided for the commencement thereof.

Supplement, p. 31.

LOCAL EXTENT.—This Act takes effect in Bengal districts to which it is extended by order under s. 1.

by order under s. 1.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum and Kolhan in the district of Singhbhum in the Chota Nagpur Division—see Vol. 1V, Pt. III.

It is in force in the district of Angul, see Vol. IV, Pt. IV; but its application is barred in the Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

EXEMPTION FROM STAMP DUTY.—Bonds or mortgage-deeds executed by headmen nominated, under rules framed in accordance with section 90 of this Act for the due

nated, under rules framed in accordance with section 99 of this Act, for the due performance of their duties under the Act, are exempted from stamp duty—see the Indian Stamp Act, 1899 (2 of 1899), Sch. I, Arts. 15, 57, in General Acts, 1898-1909, Ed. 1928, pp. 107, 125.

Exclusion of other Acts.—Nothing in the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), applies to any embankment, land or water-course which is under the operation of the present Act—see Ben. Act 2 of 1882, s. 91, post, p. 483.

Nothing in the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), applies to any canal or flood-embankment as defined in the present Act—see s. 4, post, p. 207.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalaur.

Sambalpur.

[8] For a list of orders made under section 1, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1875, Pt. IV, p. 76; for Report of Select Committee, see ibid, p. 330; and for Proceedings in Council, see ibid, 1875, Supplement, pp. 8, 412, 1497, ibid, 1876,

(Secs. 2-3.)

- 2. (Repeal of Acts.) Rep. by the Amending Act, 1903 (1 of 1903).
- Interpretation clause.
- 3. In this Act, unless there be something repugnant in the subject or context.—
- " Canal."
- (1) "canal" includes-
 - (a) all canals, channels and reservoirs hitherto constructed, maintained or controlled by Government for the supply or storage of water, or which may hereafter be so constructed, maintained or controlled;
 - (b) all works, embankments, structures, supply and escapechannels connected with such canals, channels or reservoirs;
 - (c) all village-channels as defined in clause (2) of this section;
 - (d) all drainage-works as defined in clause (3) of this section:
 - (e) any part of a river, stream, lake, natural collection of water or natural drainage-channel to which the Lieutenant-Governor has applied the provisions of Part II of this Act, or of which the water has been applied or used before the passing of this Act for the purpose of any existing canal;
 - (f) all lands on the banks of any canal as defined in articles (a), (b), (c), (d) and (e) of this clause, which have been acquired by Government:

" Villagechannel." (2) "village-channel" means any channel by which water is led from a canal directly into the fields to be irrigated, and includes all subsidiary works connected with any such channel, except the sluice or outlet through which water is supplied from a canal to such channel:

"Drainage-work."

(3) "drainage-work" means any work in connection with a system of irrigation which has been or may hereafter be made or improved by the Government for the purposes of the drainage of the country, whether under the provisions of Part IV of this Act or otherwise, and includes escape-channels from a canal, dams, weirs, embankments, sluices, groins and other works connected therewith, but does not include works for the removal of sewage from towns:

"Floodembankment." (4) "flood-embankment" means any embankment constructed or maintained by the officers of Government in connection with any system of irrigation-works for the protection of lands from inundation. or which may be declared by the Lieutenant-Governor to be maintained in connection with any such system; and includes all groins, spuradams and other protective works connected with such embankments:

"Collector."

- (5) "Collector" means the head revenue-officer of a district and includes any officer appointed by the Lieutenant-Governor to exercise all or any of the powers of a Collector under this Act:
- "Court." (6) "Court" means, in the Regulation Provinces. a principal Civil Court of original jurisdiction;

(Secs. 4-6.)

and, in the Non-Regulation Provinces, the Court of a Commissioner of a Division.

unless when the Lieutenant-Governor has appointed (as he is hereby empowered to do), either specially for any case, or generally within any specified local limits, a judicial officer to perform the functions of a Judge under this Act, and then the expression "Court" means the Court of such officer:

(7) "canal-officer" means an officer appointed[1] under this Act "Canalto exercise control or jurisdiction over a canal or any part thereof; and officer. includes every officer to whom any of the functions of a canal-officer under this Act have been assigned [1] by the Lieutenant-Governor.

(8) "section" means a section of this Act:

" Section."

(9) "owner" includes every person having a joint interest in the "Owner." ownership of the thing specified; and all rights and obligations which attach to an owner under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the ownership.

Ben. Act 6 of 1873.

- 4. Nothing contained in the Bengal Embankment Act, 1873,[2] Exemption from Bengal shall apply to any canal or flood-embankment as defined in this Act. Embankment Act.
- 5. The Lieutenant-Governor may from time to time declare, by Power to notification [8] in the Calcutta Gazette, the officers by whom, and the appoint local limits within which, all or any of the powers or duties hereinafter conferred or imposed shall be exercised or performed.

PART II.

OF THE APPLICATION OF WATER FOR PUBLIC PURPOSES.

6. Whenever it appears expedient to the Lieutenant-Governor that Notification the water of any river or stream flowing in a natural channel, or of when water any lake or other natural collection of still water, should be applied applied for or used by the Government for the purpose of any existing or projected public canal.

the Lieutenant-Governor may, by notification[4] in the Calcutta Gazette, declare that the said water will be applied or used after a day to be named in the said notification, not being earlier than three months from the date thereof.

^[1] For a list of orders made under section 3 (7), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. 7, Pt. VI.

[2] So much of Ben. Act 6 of 1873 as is unrepealed is printed, ante, p. 161.

^[3] For a list of notifications issued under s. 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[4] For a list of notifications issued under s. 6, see the Bihar and Orises Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 7-10.)

Powers of canal-officer.

7. At any time after the day so named, any canal-officer acting under the orders of the Lieutenant-Governor in this behalf may enter on any land and remove any obstructions, and may close any channels, and do any other thing necessary for such application or use of the said water.

Notice as to claims for compensation, 8. As soon as is practicable after the issue of such notification, the Collector shall cause public notice to be given at convenient places stating that the Government intends to apply or use the said water as aforesaid, and that claims for compensation in respect of the matters mentioned in section eleven may be made before him.

A copy of sections eleven, twelve and thirteen shall be annexed to every such notice.

Contents of notice.

9. When any claim for compensation is made before the Collector in accordance with the last preceding section, the Collector shall issue a notice requiring all persons interested in the matter in respect of which compensation is claimed to appear personally or by agent before him at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the property affected, and the amount and particulars of their claims to compensation for such interests.

Notice to occupiers.

The Collector shall also serve notice to the same effect on the occupier (if any) of the land entered on, and on such persons known or believed to be interested in the matter in respect of which compensation is claimed, or to be entitled to act for persons so interested, as reside within his district.

Power to require statements as to name and interests.

10. The Collector may also require any person on whom a notice may be served under the last preceding section, and who makes a claim for compensation in accordance therewith, to deliver to him a statement containing, so far as may be practicable, the name of every other person possessing any interest in the property affected or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for the year next preceding the date of the statement.

Penalty for failure to comply.

If any person shall fail to comply within the time fixed by the notice with a requisition made under this section, the Collector may impose upon him such daily fine as he may think fit, not exceeding fifty rupees; and such fine shall be payable daily until the requisition is complied with, and the Collector may proceed from time to time to levy the amount which has become due in respect of any such fine, notwithstanding that an appeal against the order imposing such fine may be pending;

(Sec. 11.)

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of such fine shall be made otherwise than by authority of the Commissioner.

Every person required to make or deliver a statement under this Person section shall be deemed to be legally bound to do so within the meaning required to of section one hundred and seventy-five and one hundred and seventy-ments 45 of 1860. six of the Indian Penal Code.

legally bound to do so.

- 11. No compensation shall be awarded for any damage caused Damage for which comby
 - pensation shall not be awarded.
 - (a) stoppage or diminution of percolation or floods:
 - (b) deterioration of climate or soil;
 - (c) stoppage of navigation, or of the means of rafting timber or watering cattle.

But compensation may be awarded in respect of any of the Matters in respect of following matters:which com-

- (d) stoppage or diminution of supply of water through any pensation natural channel to any defined artificial channel, whether awarded. above or underground, in use at the date of the issue of the notification under section six:
- (e) stoppage or diminution of supply of water to any work erected for purposes of profit on any channel, whether natural or artificial, in use at the date of the said notification:
- (f) stoppage or diminution of supply of water through any natural channel which has been used for purposes of irrigation within the five years next before the date of the said notification;
- (g) damage done in respect of any right to a water-course or the use of any water to which any person is entitled under the Indian Limitation Act, 1871, Part IV;[1]
- (h) any other substantial damage, not falling under any of the above clauses (a), (b) or (c), and caused by the exercise of the powers conferred by this Act, which is capable of being ascertained and estimated at the time of awarding such compensation.

9 of 1871.

^[1] Act 9 of 1871 was repealed and re-enacted by Act 15 of 1877, which again has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), and this reference should now be construed as a reference to Part IV of the latter Act (in General Acts, 1898-1909, Ed. 1928, p. 334) see the General Clauses Act, 1897 (10 of 1879), s. 8, in General Acts, 1887-97, Ed. 1928, p. 344.

(Secs. 12-14.)

Compensation for loss of tolls lawfully levied.

Notwithstanding anything contained in clause (c), compensation may be awarded in respect of the loss of any tolls which were lawfully levied on any river or channel at the time of the issue of the notification mentioned in section six.

Diminution in marketvalue to be considered.

In determining the amount of compensation under this section, regard shall be had to the diminution in the market-value, at the time of awarding compensation, of the property in respect of which compensation is claimed; and, where such market-value is not ascertainable, the amount shall be reckoned at twelve times the amount of the diminution of the annual net profits of such property, caused by the exercise of the powers conferred by this Act.

No right to any such supply of water as is referred to in clauses (d), (e) or (f) of this section in respect of a work or channel not in use at the date of the notification, shall be acquired as against the Government, except by grant or under the Indian Limitation Act, 1871, Part IV.[1] 9 of 1871.

Compensation for loss of drinkingwater.

12. If any supply of drinking-water is substantially deteriorated or diminished by any works undertaken in accordance with a declaration made by the Lieutenant-Governor under section six, the canal-officer shall be bound to provide within convenient distance an adequate supply of good drinking-water in lieu of that so deteriorated or diminished, and no person shall be entitled to claim any further compensation in respect of the said deterioration or diminution.

Limitation of claims.

13. No claim for compensation for any such stoppage, diminution or damage shall be entertained after the expiration of six months from such stoppage, diminution or damage, unless the Collector is satisfied that the claimant had sufficient cause for not making the claim within such period.

Inquiry into claim and tender of compensation.

14. On the day fixed in the notice mentioned in section nine, the Collector shall proceed to inquire summarily into the claim and to determine the amount of compensation which in his opinion should be allowed therefor, and shall tender such amount to the persons interested who have attended in pursuance of the notice given under section nine.

Power to summon witnesses.

For the purpose of such inquiry the Collector shall have power to summon and enforce the attendance of witnesses and to compel the production of documents by the same means and, as far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure. [2]

5 of 1906.

^[1] Act 9 of 1871 was repealed and re-enacted by Act 15 of 1877, which again has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), and this reference should now be construed as a reference to Part IV of the latter Act (in

General Acts, 1898-09, Ed. 1928, p. 334)—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 344.

[2] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has again been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code-see s. 158 thereof.

(Secs. 15-19.)

- 15. The Collector may, if no claimant attends pursuant to the Postpone notice, or if for any other cause he thinks fit, from time to time, ment of inquiry. postpone the inquiry to a day to be fixed by him.
- 16. If the Collector and the persons interested agree as to the Award in amount of compensation to be allowed, the Collector shall make an case of compensation award under his hand for the same. being agreed

Such award shall be filed in the Collector's office, and shall be Award to be conclusive, as between the Collector and the persons interested, of the filed and to be evidence. value of the said property and the amount of compensation allowed for the same.

17. If the Collector and the persons interested do not agree as to Collector to the amount of compensation to be allowed, or if upon the said inquiry refer matter to Court any question respecting the title to the property of which the value has when combeen diminished, or any right thereto, or interest therein, arises between pensation not or among two or more persons making conflicting claims in respect thereof, the Collector shall refer the matter to the determination of the Court in manner hereinafter provided.

18. If, when the Collector proceeds to make the inquiry as Collector to mentioned in sections fourteen and fifteen, no claimant attends, or if record any person whom the Collector has reason to think interested does in certain not attend, the Collector shall hold a proceeding and record the following cases. particulars :-

- (a) the nature and extent of the property of which the value has been diminished and in respect of which compensation is claimed, and the character and extent of the damage done;
- (b) the names of the persons whom he has reason to think interested in such property;
- (c) the amount fixed by him as compensation; and
- (d) the grounds on which such amount was determined:

and shall place the amount so fixed by him in deposit, there to be And to place held on account of the persons interested, and shall issue a notice to the amount of compensapersons believed to be interested, informing them that the said amount tion in has been deposited as required by this section, and that, should no deposit. application be made to the Court (as provided in the next succeeding section) within six weeks of the issue of the notice on the last of the persons named therein, the Collector will pay the amount to any persons legally authorized to receive and to give an acquittance for the same.

19. Any person on whom notice may be served under the last Objections preceding section, and any person interested in any property in respect to amount of compenof which such notice has been issued, may, within six weeks of the sation fixed service of such notice, apply to the Court stating his objection to the by Collector. amount of compensation as fixed by the Collector under the last preceding section, and the amount which he claims as compensation.

(Secs. 20-24.)

On receipt of such application the Court shall proceed to determine the amount of compensation to be paid on account of the claim and all other matters, as if a reference had been made to it under section seventeen.

Procedure in making reference.

20. In making reference under section seventeen the Collector shall state, for the information of the Court, the particulars mentioned in section eighteen.

Procedure on receipt of reference under section seventeen. 21. On receipt of a reference under section seventeen the Court shall proceed, as far as may be practicable, in accordance with sections nineteen to twenty-three (inclusive), and sections twenty-six to thirty-six (inclusive) of the Land Acquisition Act., 1870:[1]

. 10 of 1870.

Provided that, instead of the last clause of the said section twentysix, the following shall be read:—"The provisions of this section and of section eleven of the Bengal Irrigation Act, 1876, shall be read to every assessor in a language which he understands, before he gives his opinion as to the amount of compensation to be awarded."

Particulars of apportionment to be specified.

22. Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, whether such award be made by the Collector or by the Court, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

Disputes as to apportionment. 23. When the amount of compensation has been settled under section sixteen, if any dispute arises as to the apportionment of the same or any part thereof, the Collector shall refer such dispute to the decision of the Court.

All costs entailed by such a reference, and the proceedings of the Court thereon, shall be paid by the parties who dispute the apportionment of the compensation, in such proportions as the Court may direct, and the Collector shall not be required to disburse any such costs, nor shall any such costs be recovered from the Collector.

Determination of proportions. 24. When the amount of compensation has been settled by the Court, and there is any dispute as to the apportionment thereof, or when a reference to the Court has been made under the last preceding section, the Judge sitting alone shall decide the proportions in which the persons interested are entitled to share in such amount.

Appeal.

An appeal shall lie from every such decision to the High Court, unless the Judge whose decision is appealed from is not the District Judge, in which case the appeal shall lie, in the first instance, to the District Judge.

^[1] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to ss. 20 to 22 and 25 to 28 of the latter Act—see s. 2 (3) thereof, in General Acts, 1887-97, Ed. 1928, p. 217,

lawfully entitled thereto.

(Secs. 25-29.)

5 of 1859.

Every appeal under this section shall be presented within the time and in manner provided by the Code of Civil Procedure[1] for regular appeals in suits.

- 25. Payment of the compensation shall be made by the Collector Payment of in accordance with the award made by him under section sixteen; or compensathe proceeding held by him under section eighteen, if no application be made to the Court as provided by section nineteen; or the award made by the Court or the decision of the Judge under section twentyone; or, in the case of an appeal, under section twenty-four, in accordance with the decision in appeal, as the case may be.
- 26. The amount of compensation fixed by any award, proceeding Government or decision, as specified in the last preceding section, shall be deemed further to be the full amount payable by the Government in respect of the claim claim. dealt with therein; and the Government shall not be liable for any further claim to any person whatever in respect of any matter which was the subject of such award, proceeding or decision; nor shall any such claim be made against the Government in respect of the payment of any portion of such compensation in accordance with any award, proceeding or decision as aforesaid, or in accordance with any decision of the Judge, or of the District Judge, or of the High Court in appeal, as the case may be, under section twenty-four; and no suit shall be brought to set aside an award or decision under this Act.

27. Nothing contained in the last preceding section shall affect the Liability of liability of any person who may receive the whole or any part of any receiving compensation awarded under this Act to pay the same to the person compensation not

28. Every tenant holding under an unexpired lease, or having a Abatement right of occupancy, who is in occupation of any land at the time when interruption any stoppage or diminution of the supply in respect of which compen- of watersation is allowed under section eleven takes place, may claim an supply. abatement of the rent previously payable by him for the said land, on the ground that the interruption reduces the value of the holding:

Provided that no part of the said compensation shall have been received by the said tenant in respect of such reduction in the value of his holding.

29. If a water-supply increasing the value of such holding is after. Enhancewards restored to the said land otherwise than at the cost of the tenant, on registrathe rent of the tenant may be enhanced, in respect of the increased tion of

^[1] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was supply. repealed and re-enacted by Act 14 of 1882. The latter Act has again been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code-see s. 158 thereof.

(Secs. 30-33.)

value of such land due to the restored water-supply, to an amount not exceeding that at which it stood immediately before the abatement.

Such enhancement shall be on account only of the restored watersupply, and shall not affect the liability of the tenant to enhancement of rent on any other grounds.

Compensation when dna.

Interest.

30. All sums of money payable for compensation under this Part shall become due three months after the claim for such compensation is made in respect of the stoppage, diminution or damage complained of, and simple interest at the rate of six per centum per annum shall be allowed on any such sum remaining unpaid after the said three months, except where the non-payment of such sum is caused by the wilful neglect or refusal of the claimant to receive the same:

Collector may invest amount deposited or awarded in Government securities.

Provided that the Collector may at any time invest the whole or any portion of the amount payable as compensation under this Act in any Government securities, and such securities shall be held by the Collector for the benefit of the persons interested, and the persons interested shall be bound to receive such securities with any interest which may have accrued upon them as full payment of the sum which the Collector paid for such securities, and of any sum which he may have paid as expenses incurred in purchasing the same, and of any interest which might otherwise have accrued on such sums.

No compensation in respect of Service of notice.

- 31. No compensation shall be claimable under this Act in respect of any works executed before it came into force, or of any damage, prior works. injury or loss caused by such works.
 - 32. Service of any notice under this Part shall be made by delivering or tendering a copy thereof signed by the officer therein mentioned.

Whenever it may be practicable, the service of the notice shall be made on the person therein named.

When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business; and, if such person has no ordinary place of residence within the district, service of any notice may be made by sending copy of such notice by post in a registered cover addressed to such person at his usual place of residence.

PART III. •

OF THE MAINTENANCE OF CANALS.

Entry for inquiry.

33. Whenever it shall be necessary to make any inquiry or examination in connection with a projected canal or with the maintenance of an existing canal, or with a projected flood-embankment, or with the

(Secs. 34-37.)

maintenance of an existing flood-embankment, any canal-officer or other person acting under the general or special orders of a canal-officer mayenter upon such lands as he may think necessary for the purpose, and may exercise all powers and do all things in respect of such lands as he might exercise and do if the Government had issued a notification under the provisions of section four of the Land Acquisition Act, 1870, [1] to the effect that land in that locality is likely to be needed for a public purpose; and may set up and maintain water-gauges, and do all other things necessary for the prosecution of such inquiry and examination.

10 of 1870.

34. Such canal-officer or other person may also enter upon any land, Power to building or village-channel on account of which any water-rate is charge-inspect able for the purpose of inspecting or regulating the use of the water regulate supplied, or of measuring the lands irrigated thereby or chargeable with water-supply. a water-rate, and of doing all things necessary for the proper regulation and management of the canal from which such water is supplied.

- 35. In case of any accident being apprehended or happening to a Power to canal or flood-embankment, any canal-officer, or any person acting under enter for repairs, and his general or special orders in this behalf, may enter upon any lands to prevent adjacent to such canal or flood-embankment, and may execute all works accidents. which may be necessary for the purpose of preventing such accident, or repairing any damage done.
- 36. When such canal-officer or person proposes, under the provisions Notice to of either of the three last preceding sections, to enter into any building occupier of building, or enclosed court or garden attached to a dwelling-house not supplied etc. with water flowing from any canal, and not being adjacent to a floodembankment, he shall previously give to the occupier of such building, court or garden such reasonable notice as the urgency of the case may allow.
- 37. In every case of entry upon any land or building under section Compensaseven, section thirty-three, section thirty-four or section thirty-five, the tion for canal-officer or person making the entry shall ascertain and record the land. nature of any crop, tree, building or other property to which damage has been done, and the extent of the damage done to any such property, and shall tender compensation to the proprietors or occupiers for all damage done to the same by the entry or by any works executed.

If such tender is not accepted, the canal-officer shall refer the matter to the Collector, who shall thereupon give notice in writing to the person interested in such land and to the canal-officer, requiring them to attend before him, on a date to be fixed in the notice, for the purpose of making inquiry as to the amount of compensation.

^[1] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to s. 4 of the latter Act—see s. 2(3) thereof, in General Acts, 1887-97, Ed. 1928, p. 217.

(Secs. 38-40.)

Appeal from Collector's lecision to Jommissioner.

38. After such inquiry as he may think necessary, the Collector shall decide the amount of compensation payable; and such decision shall be subject to an appeal to the Commissioner of the Division:

Provided that such appeal be presented to the Commissioner, or to the Collector for transmission to the Commissioner, within thirty days of the decision appealed against.

If no such appeal be preferred, the decision of the Collector, or, if such appeal be preferred, the decision of the Commissioner shall be final and conclusive.

Government to provide means of crossing canals and of drainage.

39. Suitable means of crossing canals constructed or maintained at the cost of Government shall be provided at such places as the Lieutenant-Governor thinks necessary for the reasonable convenience of the inhabitants of the adjacent lands; and suitable bridges, culverts or other works shall be constructed to prevent the drainage of the adjacent lands being obstructed by any canal.

Collector to certify to Government that means of crossing canals and drainage have been provided.

On the completion of any canal or of any convenient section of any canal the Collector, after causing such inspection to be made as may be necessary, shall certify to the Government that suitable and sufficient means of crossing the canal, and suitable and sufficient means of drainage, as aforesaid, have been provided; or shall report in what respects the provision made for the above purposes is defective; and if, at any time after he shall have given such certificate, it shall be brought to his notice that the provision made as above has proved insufficient, the Collector shall cause inquiry to be made into the circumstances of the case, and, if the statement is established, shall report his opinion thereon for the consideration of the Lieutenant-Governor, and the Lieutenant-Governor shall cause such measures in reference thereto to be taken as he thinks proper.

PART IV.

OF DRAINAGE. [1]

Lieutenant-Governor may prohibit ormation of obstructions within ertain imits.

40. Whenever it appears to the Lieutenant-Governor that injury to the public health or public convenience, or to any canal, or to any land for which irrigation from a canal is available, has arisen or may arise from the obstruction of any river, stream or natural drainage-course, the Lieutenant-Governor may, by notification[2] published in the Calcutta Gazette, prohibit, within limits to be defined in such notification,

Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[1] For further enactments as to drainage, see the Bengal Drainage Act, 1880 (Ben. Act 6 of 1880), post, p. 335, and the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895), and the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), post, p. 715.

[2] For a list of notifications and orders issued under s. 40, see the Bihar and

of 1873.

(Secs. 41-45.)

the formation of any such obstruction, or may, within such limits, order the removal or other modification of such obstruction.

Thereupon so much of the said river, stream or natural drainagechannel as is comprised within such limits shall be held to be a drainagework as defined in section three.

41. The canal-officer or other person authorized by the Lieutenant- Canal-officer Governor in that behalf may, after such publication, issue an order to may issue to the person causing or having control over any such obstruction to remove person causor modify the same within a time to be fixed in the order.

ing obstructions.

- 42. If, within the time so fixed, such person does not comply with Canal-officer the order, the canal-officer may cause the obstruction to be removed or may cause obstructions modified; and if the person to whom the order was issued does not, when to be called upon, pay the expenses of such removal or modification, such removed. expenses shall be recoverable as a demand * * * *[1].
- 43. Whenever it appears to the Lieutenant-Governor that any When drainage works are necessary for the public health, or for the improve- drainage ment or proper cultivation or irrigation of any lands in districts to which necessary, the provisions of the Bengal Embankment Act, 1873,[2] do not apply, Lieutenant-Governor Ben. Act 6 or that protection from floods or other accumulations of water, or from may order erosion by a river, is required for any lands,

scheme to be

the Lieutenant-Governor may cause a scheme for such works to be and carried drawn up and carried into execution, and the persons authorized by the out. Lieutenant-Governor to draw up and execute such scheme may exercise in connection therewith all or any of the powers conferred on canalofficers by sections thirty-three, thirty-four and thirty-five, and shall be liable to any or all of the obligations imposed upon canal-officers by sections thirty-six and thirty-seven.

44. Whenever, in pursuance of a notification made under section 40, Disposal of claims to any obstruction is removed or modified; compensa-

or whenever any drainage-work is carried out under the last tion. preceding section,

all claims for compensation on account of any loss consequent on the removal or modification of the said obstruction, or the construction of such work, may be made before the Collector, and he shall deal with the same in the manner provided in Part II; but no compensation shall be allowed for any damage arising from increase of percolation.

45. No such claim shall be entertained after the expiration of six Limitation months from the occurrence of the loss complained of, unless the Collector claims. is satisfied that the claimant had sufficient cause for not making the claim within such period.

^[1] The reference to Ben. Act 7 of 1868, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted. As to recovery of "demands" see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of this Code. [2] So much of Ben. Act 6 of 1873 as is unrepealed is printed, ante, p. 161.

(Secs. 46-50.)

PART V.

OF VILLAGE-CHANNELS.

" Person " defined.

46. " Person" in this Part includes any number of persons acting jointly.

Register of villagechannels to be kept.

47. The canal-officer shall keep a register of all village-channels, whether already existing or constructed under this Act, and shall note thereon in respect of every village-channel whether it is a public channel maintained at the cost of the Government, or a private channel maintained at the cost of the owners; and shall register the names of the owners of every such private channel.

Extension or branch of villagechannel to be registered.

A village-channel made as an extension of, or a branch to, an existing village-channel shall be registered as a separate village-channel; and so much of the length of any village-channel as lies within the limits of any one village or mauza shall be entered on the register as a separate village-channel.

Every section of a village-channel so separately entered on the register shall be deemed to be a separate village-channel in respect of all rights and liabilities imposed by this Act:

Canal-officer as one village channel a section including portions lying within villages.

Provided always that, whenever it shall seem fit to the canal-officer may register for any special reason to enter upon his register as one village-channel a section of a village-channel which includes portions lying within two or more villages or mauzus, the canal-officer may, with the consent of the Collector obtained in writing, register such section as one villagechannel, and such section shall be deemed to be one village-channel in two or more respect of all rights and liabilities imposed by this Act.

Person may acquire existing villagechannel by agreement.

- 48. Any person may, with the consent of the canal-officer, acquire the property in an existing village-channel for the purpose of improving or maintaining it—
 - (a) by taking over any village-channel belonging to Government;
 - (b) by transfer of a village-channel from the owner thereof by private agreement.

Construction of new villagechannel.

49. Any person may, with the permission of a canal-officer, construct a new village-channel if he has obtained the consent of the owners and occupiers of the land required therefor.

Application struction of new villagechannel.

50. Any person desiring the construction of a new village-channel, by person desiring on but being unable or unwilling to construct it under a private arrangement with the owners and occupiers of the land affected, as mentioned in the last preceding section, may apply in writing to the canal officer stating-

> that he desires the said canal-officer, in his behalf and at his cost, to do all things necessary for constructing such villagechannel;

(Secs. 51-53.)

that he is ready to defray all costs necessary for acquiring the land and constructing such village-channel.

51. If the canal-officer considers the construction of such village-Procedure channel expedient, he may call upon the applicant to deposit any part officer conof the expense such officer may consider necessary,

siders cons-

and, upon such deposit being made, shall cause inquiry to be made truction of villageinto the most suitable alignment for the said village-channel, channel

and shall mark out the land which, in his opinion, it will be expedient. necessary to occupy for the construction thereof,

and shall forthwith publish a notification in every village through which the village-channel is proposed to be taken that so much of such land as is situated within such village has been so marked out,

and shall send a copy of such notification to the Collector of every district in which any part of such land is known to be situate for publication on such land.

Such notification shall also call upon any person who wishes to be Notice to admitted a joint owner of such village-channel to make his application person wishing to in that respect within thirty days of the publication of such notification. be joint

If any such applicant appears, and his application is admitted, he owner. shall be liable to pay his share in the construction of such villagechannel and in the cost of acquiring such land, and shall be an owner of such village-channel when constructed.

52. On receipt of copy of such notification, the Collector shall Collector to proceed to acquire such land under the provisions of the Land Acquisition acquire land. 10 of 1870. Act, 1870, [17] as if a declaration had been issued by the Government for the acquisition thereof under section six of that Act, and as if the Government had thereupon directed the Collector to take order for the acquisition of such land under section seven of the said Act, and (if necessary) as if the Government had issued orders for summary possession being taken under section seventeen of the said Act.

53. On being put in possession of the land the canal-officer shall Procedure construct the required village-channel; and on its completion shall give after construction of to the applicant notice thereof, and of any sum payable by him on villageaccount of the cost of acquiring the land and constructing the village-channel. channel.

On such notice being given, such sum shall be due from the applicant to the canal-officer.

On receipt of payment in full of all expenses incurred, the canalofficer shall make over possession of such village-channel to such applicant.

^[1] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to the latter Act—see s. 2 (3) thereof, in General Acts, 1887-97, Ed. 1928, p. 217.

(Secs. 54-58.)

Canal-officer may direct transfer of villagechannel.

54. Whenever a canal-officer considers that the transfer of a villagechannel from the owner is necessary for the proper management of the irrigation from such village-channel, he may cause a notice to be served on the registered owner to appear on a certain day, not less than fifteen days after service of notice, and to prefer any objection to such transfer.

After hearing such objection, the canal-officer may order that such village-channel shall be transferred to such person as he may think fit, and that such person be registered as owner of the said village-channel:

Provided that no person shall be registered as the owner of a villagechannel under this section, unless he has expressed in writing his willingness to be so registered, and until he has paid to the canal-officer such sum as may be fixed by the canal-officer under section fifty-six.

Person may be admitted joint owner of existing villagechannel.

55. Any person wishing to become the joint owner of an existing village-channel may petition the canal-officer to that effect, and on receipt of such petition the canal-officer may, if he think fit, issue a notice as provided in the last preceding section upon the registered owner, and, after hearing any objection which the registered owner may prefer against the admission of such applicant to be a joint owner, may direct that the applicant shall be registered as such joint owner.

Canal-officer to fix sums payable on transfer or acquisition of joint ownership.

56. When deciding the question of transfer or of admission to joint ownership under either of the two last preceding sections, the canalofficer shall also determine what amount shall be paid—

as the costs of the proceedings:

as compensation to the previous owners;

and the amount so determined shall be due by the transferee, or the person admitted to registry as a joint owner, as the case may be; and, on payment of such amount, the village-channel shall be transferred, or the applicant shall be registered as owner or as a joint owner thereof, as the case may be.

Canal-officer may fix rent channel transferred.

57. Instead of awarding payment of compensation under the last for a village preceding section, the canal-officer may fix an amount of rent to be paid annually to the previous owners by the persons to whom the villagechannel is transferred.

Ownership of villagechannel.

58. Every person-

- (a) acquiring a village-channel as provided in section forty-eight;
- (b) constructing a village-channel as provided in section fortynine: or
- (c) receiving possession of a village-channel as provided in section fifty-three; or
- (d) acquiring a village-channel by transfer as provided in section fifty-four; or
- (e) being admitted to registration as joint owner in a villagechannel as provided in section fifty-five;

shall be deemed to be an owner of such village-channel.

(Secs. 59-63.)

59. Every owner of a village-channel shall be bound-

(a) to construct and maintain all works necessary for the passage and rights

across such village-channel of canals, village-channels, of owner of

drainers channels and multiple and a victims at the time villagedrainage-channels and public roads existing at the time channel. of its construction, and of the drainage intercepted by it, and for affording proper communications across it for the convenience of the occupants of neighbouring lands;

(b) to maintain such village-channel in a fit state of repair for the conveyance of water:

(c) to allow the use of it to others on such terms as may be declared equitable by the canal-officer as hereinafter prescribed:

and shall be entitled-

- (d) to have a supply of water by such village-channel at such rates and on such terms as are prescribed by the rules made by the Lieutenant-Governor under section ninetynine:
- (e) to receive such rent for the use of the village-channel by other persons as the canal-officer may award him.

60. If the owner of a village-channel fails to fulfil the obligations If owner of mentioned in clauses (a) and (b) of the last preceding section, the canal-village-channel fails officer may require him by notice to execute the necessary works or to execute repairs within a period not being less than fifteen days, and in the event work or repair, of failure may execute them on his behalf;

canal-officer

and all expenses incurred by the execution of such works or repairs may do so. shall be a sum due by such owner to Government;

and, if any such owner who has already failed on one occasion to execute such works or repairs when required to do so, and has left them to be executed on his behalf by the canal-officer, shall again fail to execute any such works or repairs when required to do so; or if any such owner shall refuse in any respect to fulfil the obligation mentioned in clause (c) of the last preceding section, after having been required to fulfil the same by a notice in writing from the canal-officer, the canal-officer may strike such village-channel off the register, and so disqualify it to be any longer a medium for the conveyance of canalwater.

61. Any owner may resign his interest in a village-channel:

Provided such resignation be duly registered in the office of the of ownercanal-officer.

Resignation ship.

62. Any owner of a village-channel may, with the consent of the Owner may canal-officer, transfer his interest to any other person: transfer interest.

Provided that the liabilities of the person so transferring shall not cease till such transfer is registered in the office of the canal-officer.

63. If any owner of a village-channel dies, his legal representative Procedure on may apply for registration in his stead.

death of owner of villagechannel.

(Secs. 64-69.)

If no such application for registry be made within six weeks from the death of the said owner, the remaining registered owners of the villagechannel, if any, shall be deemed to be owners of the entire interest in the village-channel, until some other person shall have established his claım to be registered as owner in place of the deceased.

If the deceased shall have been the sole registered owner, the canalofficer shall be deemed to be his representative for the purposes of this Part, and shall exercise all rights and be bound by all liabilities which attached to the deceased in respect of his ownership of the said villagechannel, until some person shall have established his right to be registered as owner thereof in place of the deceased; and the canal-officer shall account to such person for all sums received and expended in the exercise of the rights and discharge of the liabilities which attached to the deceased in respect of such ownership.

Procedure registration in lieu of deceased OWNEr.

64. When any person applies for registration under the three last when person preceding sections, the canal-officer shall serve notice on the other registered owners to prefer any objection to the resignation, transfer or succession within fifteen days, and, if no such objection shall be made, objections made be deemed invalid, shall order such or if the resignation, transfer or succession to be registered.

Interest of owners unequal interests registered. Supply of water to person not

65. All joint owners of a village-channel shall be held to have an equal, unless equal interest in it, unless, with the permission of the canal-officer, they register specific unequal interests.

> 66. Any person not an owner of a village-channel, desiring to have a supply of water through such village-channel, may make a private arrangement with the owners for the conveyance of water, or may apply to the canal-officer for authority to use such village-channel.

Canal-officer may authorize supply.

owner.

67. On receipt of such application the canal-officer shall serve notice on the owners to show cause why such permission should not be granted, and, if no objection be raised, or if any objections be raised and found invalid, shall authorize the conveyance of such supply on such conditions as may appear to him equitable.

Canal-officer to fix rent of villagechannel.

68. The canal-officer shall also fix a sum as rent to be paid for the use of such village-channel to the owner.

Such rent may be in the form of a percentage on the water-rate of the person using the village-channel, or otherwise, as may be fixed by the canal-officer.

Owner of villagechannel receiving supply through another villagechannel.

69. The owner of a village-channel which receives its water through another village-channel may, at the discretion of the canal-officer, either be declared a joint owner of such other village-channel, or may be required to pay rent for the use of the same to the owner thereof, as provided in the last preceding section.

(Secs. 70-75A.)

70. All rent payable under either of the two last preceding sections Instalments shall be deemed to be due in the same instalments and at the same in which periods as the water-rate is due, or in such other instalments and at payable. such other dates as the canal-officer may direct, and may be collected by the canal-officer on behalf of the person entitled to it, if the canalofficer thinks fit.

71. Any canal-officer collecting rent under the last preceding section Canal-officer on behalf of any person entitled thereto shall be bound to pay to the to pay no more than person entitled to the same no more than the amount actually collected amount by him as rent.

collected.

72. No land acquired under this Part for a village-channel shall be Land used for any other purpose without the consent of the canal-officer acquired not to be previously obtained.

used for other purpose.

73. Every sum declared to be due under this Part shall be recoverable Dues how by the canal-officer on behalf of the Government or of the person entitled recovered. to receive the same, and shall be held to be a demand * * * * *[1].

PART VI.

OF THE SUPPLY OF WATER.

[2][74. (1) Any person who desires that water shall be supplied to his Applicaland from a canal shall make written application to that effect to the supply of canal-officer in the form prescribed by rules made under section 99; and, water. except as provided in section 75A, no person shall be liable to pay any rate or due whatever on account of water supplied to his land with the permission of the canal-officer otherwise than on an application so made.

(2) An application under this section may be made by any number

of persons acting jointly.

[2] [75. If the canal-officer grants an application made under Permission section 74, he shall cause his permission to be recorded in writing in to be recorded in such form as may be prescribed by rules made under section 99.

[2] [75A. If the canal-officer receives applications under section 74 Liability to from the occupiers of not less than eighty-five per cent of the rice lands water-rates contained in any local area, he may proceed as if he had received such non-appliapplications from the occupiers of the whole of the rice lands in such cants. area, and if he grants permission for the supply of water to the whole

see Vol. III of this Code.

^[1] The reference to Ben. Act 7 of 1868, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted. As to recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of this Code.

[2] Ss. 74, 75 and 75A were substituted for the original sections 74 and 75 by the Bihar and Orissa Irrigation (Amendment) Act, 1918 (B. & O. Act 3 of 1918), s. 2,

(Sec. 76.)

of the rice lands in such area, every occupier of rice lands therein who has not made such application, shall be liable to pay water-rates as if he had made such application:

Provided that the canal-officer shall exclude from any computation of percentage for the purposes of this section such rice lands as, in his opinion, should be excluded as being too high to receive water by direct flow or too low to require irrigation or for any other reason, and that the occupiers of such excluded lands shall not be liable to pay water-rates.]

Rules subject to conditions as to— power to stop water-supply;

- 76. All rules made by the Lieutenant-Governor under section 99 shall be consistent with the following conditions:—
- (a) The canal-officer may not stop the supply of water to any village-channel, or to any person who is entitled to such supply, except in the following cases:—
 - (1) whenever and so long as it is necessary to stop such supply for the purpose of executing any work ordered by competent authority;
 - (2) whenever and so long as any village-channel is not maintained in such repair as to prevent the wasteful escape of water therefrom;
 - (3) whenever and so long as it is necessary to do so in rotation to supply the legitimate demands of other persons entitled to water;
 - (4) whenever and so long as it may be necessary to stop the supply in order to prevent the wastage or misuse of water;

claims to compensation in case of failure or stoppage of supply;

(b) No claim shall be made against the Government for compensation in respect of loss caused by the failure or stoppage of the water in a canal, by reason of any cause beyond the control of the Government, or of any repairs, alterations or additions to the canal, or of any measures taken for regulating the proper flow of water therein, or for maintaining the established course of irrigation which the canal-officer considers necessary; but the person suffering such loss shall be entitled to such remission of the ordinary charges payable for the use of the water as is authorized by the Lieutenant-Governor:

claims on account of interruption from other causes;

(c) If the supply of water to any land irrigated from a canal be interrupted otherwise than in the manner described in the last preceding clause, the occupier or owner of such land may present a petition for compensation to the Collector for any loss arising from such interruption, and the Collector shall award to the petitioner reasonable compensation for such loss:

duration of supply;

(d) When the water of a canal is supplied for the irrigation of a single crop, the permission to use such water shall be held to continue only until that crop comes to maturity, and to apply only to that crop; but, if it be supplied for irrigating two or more crops to be raised on the same land within the year, such permission shall be held to continue for one year from the commencement of the irrigation, and to apply to such crops only as are matured within that year.

(Secs. 77-81.)

- (e) No person entitled to use the water of any canal, or any work, sale or building or land appertaining to any canal, shall sell or sub-let or sub-letting otherwise transfer his right to such use without the permission of the to use canalcanal-officer, but all contracts made between Government and the water; owner or occupier of any immovable property, as to the supply of water canal-water to such property, shall be transferable therewith, and shall transferable be presumed to have been so transferred whenever a transfer of such property takes place.
- 77. On application being made for a supply of water to be used for Canal-officer purposes other than those of irrigation, the canal-officer may give per-may supply mission for water to be taken for such purposes under such special purposes conditions and restrictions as to the limitation and control of the supply other than those of as he shall think proper to impose in each case.

PART VII.

OF WATER-RATES.

78. The rates to be charged for canal-water supplied for purposes Charge for of irrigation shall be determined[1] by the Lieutenant-Governor, and water, how determined. all persons accepting the water shall pay for it accordingly.

[2] [79. If canal-water is used in an unauthorized manner and if the Liability of person by whose act or neglect such use has occurred cannot be occupiers identified the occupion of the leads are which and the occupion of the leads are which as the leads are the leads identified, the occupiers of the lands on which such water has flowed, benefiting if such lands have received benefit therefrom, shall be liable to the from unauthorized charges made for such use as determined by rules made under section use of 99:7

80. If water supplied through a village-channel be suffered to run Liability to waste, and if, after inquiry by the canal-officer, the person through when water whose act or neglect such water was suffered to run to waste cannot be waste. discovered, all the persons chargeable in respect of the water supplied through such village-channel for the crop then on the ground shall be jointly liable for the charges made in respect of the water so wasted, as determined by the Lieutenant-Governor under section ninety-nine.

All questions arising under this and the last preceding section shall be decided by the canal-officer, subject to the provisions of section ninety-one.

81. All charges for the unauthorized use or for waste of water shall Charges be deemed to be water-rate due on the crop, and may be recovered as in addition such water-rate in addition to any penalties incurred on account of such to penalties. use or waste.

[1] For a list of orders made under section 78, see the Bihar and Orissa Local

Statutory Rules and Orders, Vol. I, Pt. VI.
[2] This section was substituted for the original section 79 by the Bihar and Orissa Irrigation (Amendment) Act, 1918 (B. & O. Act 3 of 1918), s. 3, see Vol. III of this Code.

(Secs. 82-87.)

Power to contract for collection of canal-dues.

82. The canal-officer may enter into an agreement with any person for the collection and payment to the Government by such person of any sum payable under this Act by a third party.

Sums payable under this to be rent.

83. Any sum lawfully due under this Part, either to the Government, or to any person who has entered into an agreement to Part deemed collect dues for the Government and certified by the canal-officer to be so due, shall be deemed to be rent payable on a patta or engagement in respect of the land irrigated, and shall be recoverable as such by the person to whom it is payable:

Provided that the claim (if any) for rent in respect of such land shall have priority over any claim for arrears of water-rate so far as regards recovery of rent by the exercise of the power of distraint.

Person who distrains may be called on to produce account.

84. If any person distrains half or more than half of any crop on. account of which water-rate is due, such person shall be bound, on requisition by the canal-officer, to furnish him with an account showing how the produce thus distrained has been appropriated in payment of such rent, and the canal-officer shall be entitled to challenge such account before any Court competent to try suits for arrears of rent in respect of the land in question, and such Court, if it finds that the value of the crop distrained was in excess of the amount of rent which has been due for a period not longer than a year, together with the costs of the distraint, may require the distrainer to pay the water-rate due on such crop.

Arrears of water-rate deemed to be demands.

85. Every arrear of water-rate which is due to Government, and every sum due to Government by any person on account of collection of water-rate, and every sum due to such person on account of water-rate and certified by the canal-officer to be so due, shall also be held to be a demand * * *[1].

Sections not applying to to fines. fines.

86. Nothing in sections eighty-two to eighty-five (inclusive) applies

PART VIII.

OF JURISDICTION.

Settlement of disputes as to mutual rights and liabilities of persons interested in villagechannel.

87. Whenever a dispute arises between two or more persons in regard to their mutual rights or liabilities in respect of the use, construction or maintenance of a village-channel, any such person interested may apply in writing to the canal-officer stating the matter in dispute.

Such officer shall thereupon give notice to the other persons interested that, on a day to be named in such notice, he will proceed

^[1] The reference to Bengal Act 7 of 1868, which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), is omitted. As to recovery of demands ", see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. 1, in Vol. III of this Code,

(Secs. 88-92.)

to inquire into the said matter, and, after such inquiry, he may pass his order thereon, or may transfer the matter to the Collector, who shall thereupon inquire into and pass his order on the said matter.

88. Whenever any dispute arises among joint owners of a village- Dispute as his share, the matter may be decided after inquiry by the canal-officer

channel as to their shares of expense or as to the amounts severally to shares and contributed, or as to failure on the part of any owner to contribute payments. or Collector, as provided in the last preceding section. 89. Any order passed by the Collector, under either of the two last Order passed

preceding sections, and, subject to the provisions of section 91, any by Collector such order passed by a canal-officer, shall remain in force until set officer to aside by the decree of a Civil Court, and may be executed by any force until canal-officer as if it were a decree of the Civil Court.

set aside by Civil Court.

90. All suits arising out of the exercise of the power of distraint Jurisdiction for recovery of water-rates,

as to suits arising out

or out of any acts done under colour of the exercise of the said of powers of power of distraint,

or by persons in receipt of the water-rates against any agents . employed by them in the collection of such water-rates, or the sureties of such agents for money received or for accounts kept by such agents in the course of such employment, or for papers in their possession,

shall be cognizable by the same Court or authority as would have jurisdiction if such water-rates were rent due for the land irrigated.

91. Every order passed by a canal-officer under Part V, Part VI, Appeal and Part VII or Part VIII of this Act shall be appealable to the Collector, provided that the appeal be presented within thirty days of the date on which the canal-officer made the order appealed against; and no appeal shall lie against any proceeding or order of the Collector under this Act, except as otherwise expressly provided in this Act, but all such proceedings and orders shall be subject to the supervision and control of the Commissioner of the Division and of the Board of Revenue, [1] who may pass such order thereon as they may respectively

92. Any officer empowered under this Act to conduct any inquiry Power to may exercise all such powers connected with the summoning and summon and examine examining of witnesses, as are conferred on Civil Courts by the Code witnesses. of Civil Procedure; [2] and every such inquiry shall be deemed a judicial proceeding.

B of 1859.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

^[2] Act 8 of 1859 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has again been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code—see s. 158 thereof.

(Sec. 93.)

PART IX.

OF OFFENCES AND PENALTIES.

Offences under Act.

- 93. Whoever, voluntarily and without proper authority, does any of the acts following, that is to say:-
- (1) damages, alters, enlarges or obstructs any canal or drainagework:
- (2) interferes with, increases or diminishes the supply of water in. or the flow of water from, through, over or under, any canal or drainage-work, or by any means raises or lowers the level of the water in any canal or drainage-work;
- (3) being responsible for the maintenance of a village-channel, or using a village-channel, neglects to take proper precautions for the prevention of waste of the water thereof, or interferes with the authorized distribution of the water therefrom, or uses such water in an unauthorized manner: [1] for refuses to allow the use of the channel to others as directed in clause (c) of section 59:7
- (4) corrupts or fouls the water of any canal so as to render it less fit for the purposes for which it is ordinarily used;
- (5) destroys, defaces or moves any level-mark or water-gauge fixed by the authority of a public servant:
- (6) destroys or removes any apparatus, or part of any apparatus, for controlling or regulating the flow of water in any canal or drainage work :
- (7) passes, or causes animals or vehicles to pass, in or across any of the works, banks or channels of a canal contrary to rules made under this Act after he has been desired to desist therefrom;
- (8) without the permission of the canal-officer causes, or knowingly and wilfully permits, any cattle to graze upon any [2] [canal embankments or flood-embankments, or tethers or causes or knowingly and wilfully permits any cattle to be tethered upon any such embankments. or roots up any grass or other vegetation growing on any such embankments, or removes, cuts or in any way injures or causes to be removed, cut or otherwise injured, any trees, bushes, grass or hedge intended for the protection of such embankment:
- (9) violates any rule made under the Act, for breach whereof a penalty may be incurred.

shall, in case the offence shall not amount to mischief within the meaning of the Indian Penal Code, [8] and on conviction before a 45 of 18

Penalty.

^[1] These words were inserted by the Bihar and Orissa Irrigation (Amendment) Act, 1918 (B. & O. Act 3 of 1918), s. 4—see Vol. III of this Code.

[2] These words were inserted by ibid.

^[3] See Act 45 of 1860, s. 425.

1860.

Act 1

(Secs. 94-96.)

Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment for a term not exceeding one month, or to both.

94. Whoever, without the authority of the canal-officer,—

Further

- (1) pierces or cuts through, or attempts to pierce or cut through, offences. or otherwise to damage, destroy or endanger the stability of, any floodembankment;
- (2) opens, shuts or obstructs, or attempts to open, shut or obstruct, any sluice in any such embankment;
- (3) makes any dam or other obstruction for the purpose of diverting or opposing the current of a river on the banks whereof are floodembankments, or refuses or neglects to remove any such dam or obstruction when so required by the canal-officer.

shall, in case the offence shall not amount to mischief within the Penalty. meaning of the Indian Penal Code, [1] and on conviction before a Magistrate, be liable to a fine not exceeding two hundred rupees, or to imprisonment for a term not exceeding six months.

95. Whenever any person is convicted of an offence under either Obstruction of the last two preceding sections, the convicting Magistrate may order removed and that he shall remove the obstruction or repair the damage in respect of damage repaired. which the conviction is held within a period to be fixed in such order.

If such person neglects or refuses to obey such order within the fixed period, the canal-officer may remove such obstruction, or repair such damage, and the cost of such removal or repair shall be levied from such person by the Collector[2] [under the procedure provided by the Public Demands Recovery Act, 1895,[3] for the recovery of public demands.

96. Any person in charge of, or employed upon, any canal Persons may remove from the lands or buildings belonging thereto, or may take employed on into custody without a may be can all may into custody without a warrant and take forthwith before a Magistrate take offen ders into or to the nearest police-station, to be dealt with according to law, any custody. person who within his view commits any of the following offences:---

- (1) wilfully damages or obstructs any canal;
- (2) without proper authority interferes with the supply or flow of water in or from any canal or in any river or stream, so as to make dangerous or render less useful any canal.

[1] See Act 45 of 1860, s. 425.

[3] These words and figures in square brackets in s. 95 were substituted for the words and figures "as a demand under s. 1 of the aforesaid Ben. Act 7 of 1868" by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

[3] Ben. Act 1 of 1895 was repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914). As to recovery of demands", see s. 3(6) and Sch. I of the latter Act in Vol. III of this Code.

(Secs. 97-99.)

Saving of prosecution laws.

97. Nothing herein contained shall prevent any person from being under other prosecuted under any other law for any offence punishable under this Act:

> Provided that no person shall be punished twice for the same offence.

Compensation to person injured.

98. Whenever any person is fined for an offence under this Act, the Magistrate may direct that the whole or any part of such fine may be paid by way of compensation to any person injured by such offence, or to any person who gave information leading to the detection of such offence, or to the conviction of the offender.

PART X.

OF SUBSIDIARY RULES.

Power to make, alter and cancel rules.

99. The Lieutenant-Governor may, from time to time, make rules[1] to regulate the following matters:—

- (a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter:
- (b) the cases in which, the officers to whom, and the conditions subject to which, orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;
- (c) the person by whom, the time, place or manner at or in which, anything for the doing of which provision is made in this Act shall be done;
- (d) the amount of any charge made under this Act;
- (e) and generally to carry out the provisions of this Act.

The Lieutenant-Governor may, from time to time, alter or cancel any rules so made.

Publication of rules.

Such rules, alterations and cancelment shall be published in the Calcutta Gazette, and shall thereupon have the force of law:

Provided that no rules shall be made by the Lieutenant-Governor under the powers conferred on him by this section until a draft[2] of the same shall have been published in the Calcutta Gazette for one month, after which time the Lieutenant-Governor may pass such rules as originally published, or with such alterations, additions and omissions as he may think fit.

^[1] For a list of rules made under s. 99—see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.
[2] As to the provisions applicable to the making of rules or bye-laws after previous publication, see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 26 in Vol. III of this Code.

(Schedules.)

SCHEDULE A.

(Repeal of Bengal Acts 8 of 1867 and 6 of 1869.) Rep. by the Amending Act, 1903 (1 of 1903).

SCHEDULE B.

Rep. by the Bihar and Orissa Irrigation (Amendment) Act, 1918 (B. and O. Act 3 of 1918), s. 5.

SCHEDULE C.

Rep. by the Bihar and Orissa Irrigation (Amendment) Act, 1918 (B. and O Act 3 of 1918), s. 5.

BENGAL ACT 7 OF 1876.

(THE LAND REGISTRATION ACT, 1876.)

CONTENTS.

PART I.

PRELIMINARY.

PREAMBLE.

SECTION.

- 1. Short title.
 - (Commencement.) Repealed.
- (Repealed.)
- 3. Interpretation clause.

PART II.

OF THE REGISTERS TO BE KEPT UP BY THE COLLECTOR.

- 4. Collector to keep registers.
 5. Forms, language, character and arrangement of registers.
 6. General register of revenue-paying lands.

- General register of revenue-paying lands.
 Part I of the general register.
 Part II of the general register.
 General register of revenue-free lands.
 Part I of general register of revenue-free lands.
 Part II of general register of revenue-free lands.
 Part III of general register of revenue-free lands.
 Board may direct that three last sections shall not apply to any district.
 Purpose of manzawar register.
 Mauzawar register to be arranged according to local divisions.
 Intermediate registers

- 16. Intermediate registers.

- 16. Intermediate registers.
 17. Division of intermediate register.
 18. Particulars of Part I of intermediate register.
 19. Particulars of Part II of intermediate register.
 19A. Power of Board to issue orders as to record of matters required to be entered in Register A or Part I of Register D.
- 19B. Act to be read subject to orders so issued.

PART III.

OF THE PREPARATION AND MAINTENANCE OF THE REGISTERS.

- 20. Old registers to be in force till new registers prepared.
- 21. How registers to be prepared.
- 22. Board may order new registers to be prepared.
 23. Entry of estate on any Part of a general register.
 24. Entry of mauza under local division of mauzawar register.

- 25. (Repealed.)
 26. Note to be made on general register.
- 27. Note on general register of revenue-free lands.
- 28. Collector, after inquiry, may make change in register.
 29. When Collector may order name of proprietor to be struck out of register.

SECTION.

- 30. Information to be supplied to Collector.

- 31. Penalties for not giving notice or furnishing information.
 32. When register may be altered on order of Civil Court.
 33. Lands held without payment of rent deemed to be part of certain estates.
- 34. Collector may include any lands in an estate.
- 35. Collector may register lands as a revenue-free estate and call on proprietor to apply for registration.
- 36. Board to decide what lands to be included in each revenue-free property.
- 37. Collector may serve notice for inclusion of lands in revenue-free property.

PART IV.

OF THE REGISTRATION AND MUTATION OF NAMES.

- 38. Proprietor and manager to register within specified time. 39. Lieutenant-Governor may fix date before which proprietor and manager must apply for registration.
- 40. Lieutenant-Governor may fix different dates in respect of different estates.
 41. Publication of date fixed by Lieutenant-Governor.
- 42. Person succeeding to proprietary right in, or management of, estates to give information within six months.

- 43. Lieutenant-Governor may exempt proprietors from obligations imposed by Act.
 44. Mortgagee may apply for registration.
 45. Presentation of application.
 46. Manager to specify extent of interest of each person for whom he manages.
 47. Collector when to register applicant for registration as manager appointed by
- authority.
- 48. Notice to objectors.
 49. Publication of notice.
- 50. Notice to transferor.

- 51. Effect of irregularity in publicatior or service of notice.
 52. Inquiry by Collector.
 53. Power to summon witnesses and compel production of documents.
- 53A. Record of evidence in inquiries. 54. Payment of costs.
- 55. Dispute as to possession, succession or acquisition by transfer.
- 56. In cases of disputed possession, etc., Collector may appoint receiver.
- 57. Effect of Collector's order.
- 58. Procedure on reference under section 55. 59. Procedure on receipt of reference.
- 60. Judge may appoint curator.
- 61. Costs.
- 62. Effect of summary decision of Court.
- 63. Court to certify its determination to Collector.
- 64. Collector to levy fees on transfers. 65. Penalty for omitting to comply with Act.
- 66. Fine may be levied notwithstanding appeal.
- 67. No penalty on person who applies suo motu.
- 68. Liabilities of proprietors and managers.

PART V.

OF THE OPENING OF SEPARATE ACCOUNTS IN RESPECT OF SHARES.

- 69. Opening of separate account of share of applicant under Act 11 of 1859.
- 70. Proprietor holding undivided interest in specific lands may apply for separate account.
- 71. Sections 12, 13 and 14 of Act 11 of 1859 applied. 72. Application to close separate account.

- 73. Separate account may be closed and another opened.
 74. Procedure in case of objection.
 74A. Power of Collector to close a separate account otherwise than upon application.

PART VI.

MISCELLANEOUS.

- 75. Collector to furnish extract from register.
 76. Collector to furnish translation of extract.
- 77. Changes in names of proprietors, etc., and extent of interest to be notified on estate.
- 78. No person bound to pay rent to claimant not registered.

 Payment to each of several proprietors, etc., holding in common tenancy.
- 79. Indemnity to persons paying rent to registered proprietor.
 80. Payment of sums payable by Collector to proprietors jointly.
 81. Saving of written contracts and recovery from person receiving money.
 82. Every amount due deemed to be a demand.
 83. Collector may require proprietor to name estate.
 84. Collector may delegate duties.
 85. Appeal

- 85. Appeal.
 86. Exclusion of time in case of appeals.
 87. Lieutenant-Governor may vest officer with special appellate powers.
 88. Board may make certain rules.
- 39. Saving clause.

SCHEDULE OF REGULATIONS REPEALED. (Repealed.)

BENGAL ACT 7 OF 1876.

(THE LAND REGISTRATION ACT, 1876.)[1]

(23rd August, 1876.)

An Act to provide for the registration of revenue-paying and revenue-free lands, and of the proprietors and managers thereof.

Whereas it is expedient to make better provision for the prepara- Preamble. tion and maintenance of registers of revenue-paying and revenue-free lands, and of the proprietors and managers thereof, and of certain mortgages of revenue-paying lands; It is hereby enacted as follows:—

PART I.

PRELIMINARY.

1. This Act may be called the Land Registration Act, 1876. Short title. (Commencement). Rep. by the Amending Act, 1903 (1 of 1903).

[1] LEGISLATIVE PAPERS.—For Report of Select Committee, see Calcutta Gazette, 1876. Part IV, p. 57; and for Proceedings in Council, see ibid, Supplement, 1875, p. 11; ibid, Supplement, pp. 42, 135, 515 and 829.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to be in force in the Districts of Hazaribagh. Ranchi, Palamau and Manbhum and Pargana Dhalbhum and the Kolhan and the Porahat Estate in the District of Singhbhum in the Chota Nagpur Division, see Vol. IV, Part III.

It is in force in the Sonthal Parganas,—Vol. IV, Part IV; but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. 1 of this Code.

in Vol. I of this Code.

Annotated Reprint .-- For an annotated reprint of this Act, see the Bihar and

Orissa Land Registration Manual, 1928, p. 6.

Other Enactments.—As to the registration of land, see also—
(1) the Bengal Revenue-free Lands (Non-Badshahi Grants) Regulation, 1793 (19 of 1793), ss. 24 and 26 to 28, in Vol. I of this Code.
(2) the Bengal Revenue-free Lands (Badshahi Grants) Regulation, 1793 (37 of 1793),

ss. 19 and 21 to 23, in Vol. I of this Code.

(3) the Bengal Revenue-free Lands Regulation, 1800 (8 of 1800), s. 19, in Vol. I of this Code.

(4) the Bengal Land-revenue Sales Act, 1859 (11 of 1859), s. 38, in Vol. I of this Code.

(5) the Bengal Land-revenue Sales (Amendment) Act, 1862 (Ben. Act 3 of 1862), ante, p. 3, and

(6) The Chota Nagpur Tenures Act, 1869 (Ben. Act 2 of 1869), ante, p. 105.

As to the registration of tenants' rights, see the Land Records Maintenance Act,

1895 (Ben. Act 3 of 1895), printed post, p. 617.

As to the effect of registration under the present Act, see the Bengal Tenancy Act, 1885 (8 of 1885), ss. 60, 93, 121, in Vol. I of this Code, and the Orissa Tenancy Act, 1913 (B. & O. Act 2 of 1913), ss. 69, 104, 155, in Vol. III of this Code.

(Secs. 2-3).

2. (Regulations repealed.) Rcp. by the Amending Act, 1903 (1 of 1903).

Interpretation clause.

3. In this Act, unless there be something repugnant in the subject or context.-

" Civil Court."

(1) "Civil Court" means any Civil Court which is competent to hear and determine the matter with respect to which the words are used:

" Estate."

- (2) "estate" includes—
 - (a) any land subject to the payment of land-revenue, either immediately or prospectively, for the discharge of which a separate engagement has been entered into with Government:
 - (b) any land which is entered on the revenue-roll as separately assessed with land-revenue (whether the amount of such.) assessment be payable immediately or prospectively), although no engagement has been entered into with Government for the amount of revenue so separately assessed upon it as a whole;
 - (c) any land being the property of Government of which the Board shall have directed the separate entry on the general register hereinafter mentioned [1] [or on any other register prescribed for the purpose by rule made under this Act];

"Extent of interest."

(3) "extent of interest" means the share or interest in an estate or revenue-free property of which the person with respect to whom the words are used is in possession as proprietor or manager;

" Lieutenant-Governor." " Local

division."

(4) "Lieutenant-Governor" means the Lieutenant-Governor of Bengal for the time being, or the person acting in that capacity;

(5) "local division" means a sub-division, pargana, thana, police division or jurisdiction, or other division according to which the mauzawar register of the district is arranged;

"Manager."

(6) "Manager" means every person who is appointed by the Collector, the Court of Wards[2] or by any Civil Court or Criminal Court to manage any estate or revenue-free property or any part thereof, and every person who is in charge of an estate or revenue-free property or any part thereof on behalf of a minor, idiot or lunatic, or on behalf of a religious or charitable foundation[8] [or as a trustee or executor];

[3] The words in square brackets were added to clause (6), by the Bengal Land

Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 2 (2), post, p. 767.

^[1] The words in square brackets were added to s. 3 (2) (c), by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 2 (1), post, p. 767.

[2] For power of Court of Wards to appoint a manager, see the Court of Wards Act, 1879 (Ben. Act 9 of 1879), s. 20, post, p. 288.

(Sec. 4.)

- [1][(7) "mauza" means the area defined, surveyed and recorded "Mauza." as a distinct and separate mauza in—
 - (a) the general land-revenue survey which has been made of the Province of Bengal, or
 - (b) any survey made by the Government which may be adopted by notification in the Calcutta Gazette as defining mauzas for the purposes of this clause in any specified area;

and, where a survey has not been made by or under the authority of the Government, such area as the Collector may, with the sanction of the Board of Revenue, by general or special order, declare to constitute a mauza;

- (8) "proprietor" means every person being in possession of an "Propriestate or revenue-free property, or of any interest in an estate or revenue-free property, as owner thereof; and includes every farmer and lessee who holds an estate or revenue-free property directly from or under the Collector:
- (9) "recorded proprietor" means any proprietor whose name, and "Record-the character and extent of whose interest in an estate or revenue-free ed proprie-property, stand registered in any general register now existing or hereafter to be made under this Act:
- (10) "revenue-free property" means any land not subject to the "Revenue-payment of land-revenue which is included under one entry in any part free property." of the general register of revenue-free lands;
 - (11) "section" means a section of this Act;

" Section."

- (12) "the Board" means the Board of Revenue of the Provinces for "The the time being subject to the Lieutenant-Governor of Bengal;[2]

 Board."
- (13) "the Collector" means the Collector of the district to which "The Collector." a register relates;
 - (14) "the district" means the district to which a register relates. "The district."

PART II.

OF THE REGISTERS TO BE KEPT UP BY THE COLLECTOR.

- 4. The Collector of every district shall prepare and keep up the Collector to keep registers:—

 keep registers.—

 ters.
 - A.—A general register of revenue-paying lands.
 - B.—A general register of revenue-free lands-
 - C.—A mauzawâr register of all lands revenue-paying and revenue-free.
 - D.—An intermediate register of changes affecting entries in the general and mauzawâr registers.

^[1] This clause was substituted for the original clause by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 2 (2), post, p. 767.
[2] Now the Board of Revenue for Bihar and Orissa.

(Secs. 5-8.)

Forms, language, character and arrangement of registers.

5. The registers shall be written in such forms, languages and character, and shall be arranged in such manner not being inconsistent with the provisions of this Act, as the Board from time to time may direct[1] for each district.

[2]*

General register of revenuepaying lands.

6. The general register of revenue-paying lands shall consist of two parts:--

Part I.—Book of estates borne on the revenue-roll of the district. Part II.—Book of lands situated in the district appertaining to estates borne on the revenue-rolls of other districts.

Part I of the general register.

- 7. In Part I of the general register of revenue-paying lands shall be entered the name of every estate which is borne on the revenue-roll of the district, and the following particulars relating to every such estate :--
 - (a) name of the estate:
 - (b) number of the estate on the revenue-roll of the district, and the annual amount of revenue for which it is liable;
 - (c) names and addresses of the proprietors, managers and mortgagees of the estate, with the character and extent of the interest of each proprietor, manager and mortgagee;
 - (d) name of every local division in which any lands of the estate are situated, whether in the district or in any other district, with specification under each local division of—
 - (i) the number of mauzas containing such lands,
 - (ii) the name of each mauza,
 - (iii) the number which each mauza bears under the local division in the mauzawâr register, and
 - (iv) the area of land appertaining to the estate which each mauza contains, if ascertained by survey or other authentic measurement;
 - [3](e) reference to entries made in the intermediate register after the preparation of the general register.

Part II of the general register.

8. In Part II of the general register of revenue-paying lands shall be entered the name of every estate which comprises lands situated in

[1] For a list of orders made under s. 5, see the Bihar and Orissa Local Statutory

Rules and Orders, Vol. I, Part VI.

[2] The second paragraph of s. 5 was repealed, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (1) (a), post, p. 769. The said paragraph ran thus :-

"The entries in each Part of the general registers shall be numbered in one conse-

cutive series for the whole district, and shall follow one alphabetical arrangement, running from the beginning to the end of the Part."

[3] Clause (e) of s. 7 is to be deemed to be repealed in a district in respect of which any order has been issued under any clause of s. 19A of this Act, see the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (3), post, r. 769.

(Secs. 9-10.)

the district but which is borne on the revenue-roll of some other district, and the following particulars relating to every such estate:-

- (a) name of the estate;
- (b) name of the district on the revenue-roll of which the estate is borne, with the number which the estate bears on that roll, the annual amount of revenue for which it is liable, [1] and the number which the estate bears in Part I of the general register of revenue-paying lands for its own district];
- (c) names and addresses of the proprietors, managers or mortgagees of the estate, with the character and extent of the interest of each proprietor, manager and mortgagee;
- (d) name of every local division of the district to which the register relates, in which any lands of the estate are situated, with a specification under each local division of—
 - (i) the number of mauzas containing such lands,
 - (ii) the name of each mauza,
 - (iii) the number which each mauza bears under the local division in the mauzawar register of the district, and
 - (iv) the area of land appertaining to the estate which each mauza contains, if ascertained by survey or other authentic measurement;
- [2](e) reference to entries made in the intermediate register after the preparation of the general register.
- 9. The general register of revenue-free lands shall consist of three General parts-

register of revenue-free lands.

- Part I.—Book of lands held exempt from revenue in perpetuity.
- Part II.—Book of lands occupied for public purposes without payment of revenue.
- Part III.—Book of unassessed waste-lands and other lands not included in Part I or Part II of the general register of revenue-free lands.
- 10. In Part I of the general register of revenue-free lands shall be Part I of entered

all lands held under badshahi, hukami and other lakhiraj grants revenue-free which have been declared to be valid by competent authority,

general register of

^[1] These words in square brackets in s. 8(b) are to be deemed to be repealed in any

district in respect of which any order has been issued under clause (a) or clause (b) of s. 19A of this Act, see the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (3) (i), post, p. 769.

[2] Clause (e) of s. 8 is to be deemed to be repealed in a district in respect of which any order has been issued under any clause of s. 19A of this Act, see the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (3), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. 16 (4), 1906 (Ben. Act 2 of 1906), s. post, p. 769.

⁶ L. D.

(Sec. 11.)

all lands in which the Government has conferred a proprietary title free in perpetuity from any demand on account of land-revenue, in consideration of the payment of a capitalized sum, or for any other reason, and

any lands of which the Board, on a full report of the circumstances of the case, shall have sanctioned the entry in this Part of such register.

Part I of such register shall, as far as possible, contain the following particulars in respect of each entry:—

- (a) name of the revenue-free property, with the character of the tenure, whether jagir, altampha, debottar, bishunpirit, purchased revenue-free, redeemed or otherwise;
- (b) date of the grant or title being conferred;
- (c) nominal area granted;
- (d) names of the grantor and original grantee;
- (e) reference to any decree or other order of competent authority declaring or recognizing the grant to be valid;
- (f) names and addresses of the proprietors and managers of the revenue-free property, with the character and extent of the interest of each proprietor and manager;
- (g) name of every local division in which any land appertaining to the property is situated, whether in the district or in any other district, with specification under each local division of—
 - (i) the number of mauzas containing such land,
 - (ii) the name of each mauza,
 - (iii) the number which each mauza bears under the local division in the mauzawâr register, and
 - (iv) the area of land appertaining to the revenue-free property which the mauza contains, if ascertained by survey or other authentic measurement, with specification of the number of each field according to the papers of such measurement;
- (h) reference to the entries in earlier registers relating to the property or any part thereof;
- (i) reference to entries made in any intermediate register after the preparation of the general register.

Part II of general register of revenue-free lands shall be entered all lands which are occupied by the Government, or by any public body, for public purposes, and on account of which no land-revenue is demanded.

It shall contain the following particulars:-

(a) area of the land comprised in each entry;

(Secs. 12-13.)

- (b) names of the local divisions and mauzas in which the lands are situated, with area in each mauza and a reference to the number under which each mauza is entered in the mauzawâr register of the local division;
- (c) name of the department of Government or of the public body by which the land is occupied;
- (d) the purpose for which it is occupied;
- (e) the date and particulars of the appropriation of the land to such purpose;
- (f) reference to entries in the intermediate register made after the preparation of the general register.
- 12. In Part III of the general register of revenue-free lands shall be Part III of entered all waste and other lands (not being included in any other part general of the general register) which are not assessed to land-revenue. It shall revenue-free contain the following particulars:-
 - (a) name and number of the lot, or other particulars identifying the property;

(b) area comprised in each entry;

- (c) name of every local division and mauza in which lands of the property are situated, with area in each mauza, and a reference to the local division and number under which each mauza is entered under the local division on the mauzawâr register;
- (d) reference to entries in the intermediate register made after the preparation of the general register.
- 13. If it shall appear to the Board that the circumstances of any Board may district are such, [1] [or that, in consequence of the preparation of a direct that record-of-rights, or for any other reason, the circumstances of any district sections or part of a district are so altered,] that it is not desirable or practicable shall not to prepare[2][or rewrite or maintain] the register of revenue-free lands apply to in the manner described in the three last preceding sections,

district.

the Board may direct[8] that the said sections shall not apply to such district, and may lay down rules, not being inconsistent with the provisions of this Act, in respect of the registration of revenue-free lands and of the proprietors and managers thereof:

Provided that such rules shall require the registration of the name of one or more persons as liable for the discharge of the duties and

^[1] The words in square brackets in s. 13 were inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 3 (1), post, p. 767.

[2] The words in square brackets in s. 13 were inserted by *ibid*, s. 3 (2).

[3] For a list of order made under s. 13, see the Bihar and Orissa Local Statutory

Rules and Orders, Vol. I, Part VI.

(Secs. 14-15.)

obligations referred to in section sixty-eight in respect of all lands which under such rules may be registered as separate revenue-free properties.

Such rules, when they shall have been sanctioned by the Lieutenant-Governor and published in the Calcutta Gazette and otherwise locally as the Lieutenant-Governor may order, shall, from such date as the Lieutenant-Governor may direct, have the same force as if they were included in this Act.

Purpose of mauzawár register.

14. The mauzawar register shall be kept up for the purpose of showing, in a connected form, the mauzas situated in each local division, and the lands, whether revenue-paying or revenue-free, of which each mauza consists.

Mauzawár local divisions.

15. The mauzawar register shall be arranged and divided according be arranged to subdivisions, parganas, thanas, police-jurisdictions, or such other local according to divisions of the district as the Board may from time to time direct for each district; the entries of mauzas shall have a separate series of consecutive numbers[1][for each local division, and shall be so arranged as the Board[2] may direct.]

The mauzawar register shall contain the following particulars:—

- (a) name of the mauza;
- (b) total area of mauza, if ascertained by survey or other authentic measurement, with a reference to the authority for the entry:
- (c) name of every estate or revenue-free property to which any of the lands of the mauza appertain, with a reference to the entry of each on the general register, and a specification of the area of land in the mauza which appertains to each, if ascertained by survey or other authentic measurement, with a reference to the authority for such entry;
- (d) gross rental of the area of land in the mauza which appertains to each estate or property, if such rental has been ascertained during management of the lands by the Collector or by other authentic means, with a reference to the authority for the entry;
- (e) reference to entries made in intermediate registers after the preparation of the mauzawar register.

of this Code.

^[1] The words in square brackets in s. 15 were substituted for the words "and a separate alphabetical arrangement for each local division," by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 4, post, p. 767.

[2] Now the Board of Revenue for Bihar and Orissa, see the Bengal, Bihar and Orissa and Assam Laws Act, 1912 (7 of 1912), s. 5 and Sch. D, item 10, in Vol. I

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 16-19.)

- 16. Intermediate registers shall be kept up for the purpose of Intermedirecording therein from time to time changes affecting the entries which ate registers. stand in the general and mauzawár registers, so that by a reference to them, in connection with those registers, correct information up to date on the points recorded may be obtained at any time; also for the purpose of keeping together, as far as possible, in a convenient form, the information which will eventually be required for re-writing the general and mauzawár registers.
 - 17. The intermediate register shall consist of two parts, as follows: Division of Part I.—Book of changes affecting entries relating to revenue-intermediate register. paying lands.

Part II.-Book of changes affecting entries relating to revenuefree lands.

- 18. In Part I of the intermediate register shall be recorded, in a Particulars convenient form, all changes in the names of proprietors, managers and of Part I of intermedi-(so far as this Act requires) mortgagees, and in the character or extent ate register. of the interest of each such proprietor, manager and mortgagee, and such other changes affecting any entry standing in the general register of revenue-paying lands, or any entry in the mauzawar register relating to revenue-paying lands as cannot conveniently be entered against such entry in the general or the mauzawar register. It shall contain the following particulars:-
 - (a) name of the estate affected, with references to [1] [the number it bears on the general register of revenue-paying lands,] the number it bears on the revenue roll, and the amount of revenue for which it is liable:
 - (b) references to previous entries in the intermediate register relating to the estate;
 - (c) particulars of the change, with a reference to the authority under which it is made;
 - (d) the numbers borne by the entries[1] [in each Part of the general register of revenue-paying lands, and] under each local division in the mauzawar register which are affected by the change here recorded.

19. In Part II of the intermediate register shall be recorded all Particulars changes in the names of proprietors and managers of revenue-free of interproperties, and in the character and extent of interest of each such mediate proprietor and manager, and such other changes affecting any entry register. standing in the general register of revenue-free lands, or any entry

^[1] The words in square brackets in s. 18, clauses (a) and (d), are to be deemed to be repealed in a district in respect of which any order has been issued under clause (a) or clause (b) of s. 19A of this Act, see the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (3) (ii) and (iii), post, p. 769.

(Secs. 19A-19B.)

relating to revenue-free lands in the mauzawar register, as cannot conveniently be entered against such entry in the general or the mauzawar register. It shall contain the following particulars :-

- (a) name and character of the revenue-free property to which the lands appertain, and number which it bears in any part of the register of revenue-free lands:
- (b) reference to previous entries in the intermediate register relating to the property;
- (c) particulars of the change, with a reference to the authority under which it is made:
- (d) the numbers borne by the entries in the general register and under each local division in the mauzawâr register which are affected by the change here recorded.

Power of Board to issue orders as to record of matters required to be entered in Register A or Part I of Register D.

[1] 19A. Notwithstanding anything contained in other sections of this Act, the Board[2] may from time to time, by written order, direct, in respect of all or any districts,-

- (a) that all matters required by this Act to be entered in the general register of revenue-paying lands and Part I of the intermediate register, respectively, shall be entered in a combined register to be prescribed by the Board[2], instead of in the aforesaid registers, or
- (b) that all matters required by this Act to be entered in the general register of revenue-paying lands shall be entered in Part I of the intermediate register instead of in the general register of revenue-paying lands, or
- (c) that all matters required by this Act to be entered in Part I of the intermediate register shall be entered in the general register of revenue-paying lands instead of in the intermediate register.

Explanation .- An order issued under this section may merely direct the entry of matters in some register other than that prescribed for the purpose by other sections of the Act. It may not direct the non-record of matters which are required by the Act

Act to be to orders so issued.

[1]19B. All provisions of this Act (other than section 19A as to the read subject maintenance of registers, as to the entry of matters in any particular register or in any particular Part of any register, and as to other matters relating to registers, shall be read subject to any orders issued by the Board[2] under section 19A and for the time being in force.

^[1] Sections 19A and 19B were inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 5, post, p. 768.
[2] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 20-23.)

PART III.

OF THE PREPARATION AND MAINTENANCE OF THE REGISTERS.

20. Until the registers by this Act directed to be prepared are so Old regisprepared the existing registers now kept up in the office of every ters to be in Collector shall be deemed to be the registers kept up under this Act, new regis. that is to say,

the existing general register of revenue-paying estates shall be prepared.

deemed to be the general register of revenue-paying lands;

the existing pargana register (Part II) of revenue-free lands shall be deemed to be the general register of revenue-free lands and the mauzawār register in respect of revenue-free lands;

the existing pargana register (Part I) of revenue-paying lands shall be deemed to be the mauzawâr register in respect of revenue-paying lands:

the existing register of intermediate mutations shall be deemed to be the intermediate register of changes affecting entries in the general and mauzawâr registers:

and all the provisions of this Act shall, as far as possible, be deemed to be applicable to such registers and to the registration therein of the names and interests of proprietors, managers and mortgagees.

- 21. The first general registers and the first mauzawar register under How registhis Act shall be prepared for each district at such time as the Board ters to be may direct from the entries in the existing registers mentioned in the prepared. last preceding section, and from any other authentic information available to the Collector.
- 22. The Board may order new registers to be prepared whenever it Board may may think fit, and such registers shall be prepared from the registers order new existing at the time of such order, and from the entries of subsequent registers to changes in the intermediate registers, and from any other authentic pared. information available to the Collector; and such additions to, omissions from, and alterations in, the entries as they appeared in the previous registers shall be made as subsequent changes have rendered necessary, and the authority for every change shall be expressly referred to.
- 23. Whenever, after the preparation of the general registers, it may Entry of be necessary to bring any estate or revenue-free property on to any Part estate of such registers on which such estate or property is not already borne, on any such estate or property shall be at once brought on to such Part under a general a new number in continuation of the last number already borne on such register. Part:

[¹]* * *****

^[1] The words and figures "and a note referring to such entry shall be made in the place in the general register in which such estate or property would have appeared according to the alphabetical arrangement mentioned in section five" were repealed by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (1) (b), post, p. 769.

(Secs. 24-27.)

Entry of mauza under local division of mauzawár register.

- 24. Whenever, after the preparation of the mauzawar register, it shall be necessary to enter any mauza under any local division of such register under which it is not already borne, such mauza shall be at once brought under the proper local division with a new number in continuation of the number borne by the last entry under such local division; and a note referring to such entry shall be made in the place in the mauzawar register in which such estate or property would have appeared according to [1][the arrangement directed under section fifteen].
- 25. (Order of entries under two preceding sections.) Rep. by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 16 (c).

Note to be made on general register.

- 26. After the general register of revenue-paying lands shall have been prepared, a note shall from time to time be made on such register against the estate affected
 - of every alteration which may be ordered by competent authority in the amount of revenue assessed on any estate;
 - of every partition of an estate into two or more estates;
 - of every change involving the removal of an estate from the part of the register on which it is borne;
 - of the redemption of every mortgage in respect of which the name of the mortgagee shall have been entered on the register;

and in every such note reference shall be made to the authority under which the change was made.

In preparing the register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand in the register may be recorded in Part I of the intermediate register, as provided in section 18, and a reference shall be made in the general register against the estate affected to every entry which may be made in the intermediate registers recording any such change.

Note on general register of revenuefree lands.

- 27. After the general register of revenue-free lands shall have been prepared, a note shall from time to time be made on such register against the property affected
 - of every case in which lands entered as revenue-free may be declared liable to assessment, and assessed by competent authority;
 - of every partition of a revenue-free property into two or more properties;
 - of every change involving the removal of a revenue-free property from the part of the register on which it is borne;

^[1] The words in square brackets in s. 24 were substituted for the words "the alphabetical arrangement mentioned in section fifteen," by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 6, post, p. 768.

(Secs. 28-30.)

and in every such note reference shall be made to the authority under which the change was made.

In preparing the register space shall be left for the future entry of such notes against each estate.

Any other changes affecting the entries as they stand on the register may be recorded in Part II of the intermediate register as provided in section 19.

28. Whenever it shall come to the notice of the Collector that any Collector, change has occurred which affects any entry in his registers, and renders after necessary any alteration therein, the Collector, after making such inquiry may make as may be necessary, shall make such alteration:

change in register.

Provided that notice shall be given to the recorded proprietors and managers of any estate or revenue-free property before any change is made in any way affecting such estate or property, and to every person whose name the Collector is about to register as proprietor or manager of any estate or revenue-free property, before such registration is affected; and any objections which may be made to the proposed change or registration shall be duly considered by the Collector before he orders such change or registration to be made.

[1][The notice required under this section shall be served in the manner prescribed by section 50.7

29. Whenever it shall appear to the Collector, in the course of an When Colinquiry made in respect of an application under section thirty-eight or lector may section forty-two or otherwise that any person whose name is recorded in of propriethe general register as proprietor or manager, or joint-proprietor or joint- tor to be manager, of an estate or revenue-free property, is no longer in possession of register. of any interest in such estate or property as proprietor or manager, and that the names of other persons have been recorded as proprietors or managers of every portion of the interest in respect of which such proprietor's or manager's name was borne on the register,

the Collector may order the name of such person to be struck out from among the recorded proprietors or managers of such estate or property and, if required, may grant him a certificate to that effect.

30. To enable the Collector more effectually to maintain his registers,-

(a) whenever any competent authority may direct that any estate plied to constant the resource relative may direct that any estate collector. be transferred from the revenue-roll of one district to that of another, the Collector of the district from the revenue-roll of which the estate is to be transferred shall transmit to the Collector of the district to the revenue-roll of which the transfer is to be made a copy of all entries in

Information to be sup-

^[1] The words in square brackets were added to s. 28 by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 7, post, p. 768,

(Sec. 31.)

any of the registers relating to the estate to be so transferred, and entries taken from such copy shall be made in the proper registers of the district to which the transfer is made;

- (b) whenever the Collector of any district shall make an entry, or any alteration of any entry, in his registers, which will affect any entry required to be made under this Act in any register of another district, such Collector shall transmit to the Collector of such other district copy of such entry as made or as altered, and the Collector to whom such copy is transmitted shall cause the necessary entries, or alteration of entries, to be made in the registers of his district;
- (c) every proprietor and manager of an estate or revenue-free property in which any new village may be established, whether under the name of tola, *kismat* or any other designation, shall forthwith give notice to the Collector of the establishment of such new village:

Provided that the Board may exempt any district, or part of a district from the operation of the clause;

(d) every proprietor and manager of an estate or revenue-free property, and any person holding any interest in land, or employed in the management of land, shall be bound, on the requisition of the Collector.

to furnish any information required by the Collector for the purpose of preparing, making or correcting any entry of particulars specified in sections seven, eight, ten, eleven, twelve or fifteen, or

to show to the satisfaction of the Collector that it is not in his power to furnish the required information.

Such requisition shall be made by a notice to be served in the manner prescribed by section fifty, requiring the production of such information before a date mentioned in such notice.

- [1](e) whenever any minor, disqualified proprietor or other beneficiary, whose name has been recorded in any register along with that of a guardian or manager, lawfully assumes direct charge of his estate, he shall forthwith give notice to the Collector and apply for correction of the register by removal therefrom of the name of such guardian or manager.
- 31. Whoever, being bound by clause (c) of the last preceding section, to give notice to the Collector of the establishment of any new village, or under clause (d) of the said section to furnish any information required by the Collector, [2] [or under clause (e) of the said section to give notice of his having assumed direct charge of an estate], shall voluntarily or

Penalties for not giving notice or furnishing information.

^[1] This clause (e) was added to s. 30 by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 8, post, p. 768.
[2] The words in square brackets were inserted in s. 31 by ibid, s. 9.

(Secs. 32-34.)

negligently omit to give such notice or furnish such information, or to show to the satisfaction of the Collector that it is not in his power to furnish such information.

shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission;

and the Collector may impose such further daily fine as he may think proper, not exceeding fifty rupees, for each day during which such person shall omit to furnish the information required under clause (d) after a date to be fixed by the Collector in a notice warning the person required to furnish such information that such further daily fine will be imposed.

Such notice shall be served in the manner prescribed by section fifty, and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending:

Provided that, whenever the amount levied under any such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

32. Whenever any Civil Court makes a decree confirming any When transfer of proprietary possession which has already been made in any register may be estate or revenue-free property, or gives effect to any decree transferring altered on any such possession, such Court may order the transfer to be registered order of Civil Court. in the registers of the Collector, and the Collector shall register such transfer accordingly.

33. All lands which are held without payment of rent, not being Lands held a revenue-free property entered in the general register of revenue-free without payment lands as prescribed by sections ten, eleven, or twelve, and not being a of rent part of any such property, shall, for the purposes of this Act, be deemed be part to be a part of the estate within the local boundaries of which they are of certain included; and, if they are not included within the local boundaries of estates. any one estate, then to be a part of such neighbouring estate as the Collector shall, by an order under his seal and signature, declare.

34. Whenever it shall appear to the Collector that any lands which Collector are not included in any estate as entered in the existing general register may include should be included in any such estate for the purposes of this Art. The lands in should be included in any such estate for the purposes of this Act, the an estate. Collector shall cause a notice, addressed to the person who is believed to be in possession of such lands, to be served in the manner prescribed by

(Secs. 35-36.)

section fifty, and a general notice to be published, as prescribed by section forty-nine, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice or such longer period as the Collector may think fit to allow.

After the expiration of the said month or other period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said estate for the purposes of this Act.

Collector lands as a estate and call on

proprietor

registration.

35. Whenever it shall appear to the Collector that any land which may register is not entered on the general register as a separate revenue-free property revenue-free should be entered on the register as such property, he may cause a notice to be served in the manner prescribed by section fifty, calling on the person in possession of such land as proprietor or manager to show cause to apply for why such land should not be so registered as a revenue-free property;

and if, after hearing any objections (which may be preferred within a month of the service of the said notice, or such longer period as the Collector may think fit to allow), and after making such further inquiry as may be necessary, the Collector shall be of opinion that the land should be so registered, he shall enter such land on the general register as a revenue-free property;

and by a notice served as prescribed in section fifty, as well as by general notice published as prescribed in section forty-nine, shall require every proprietor and manager of such revenue-free property to apply for registration of his name and of the character and extent of his interest as such proprietor or manager;

and thereupon every such proprietor and manager shall be deemed. for the purposes of section sixty-eight, to be a person who is required by this Act to apply for the registration of his name; and all the provisions of Part IV of this Act, so far as may be practicable, shall apply to every such person:

Provided that no such proprietor or manager shall be liable to any fine under section sixty-five until after the expiration of three months from the date on which the last-mentioned notice shall have been served:

Provided, also, that no land shall be entered as a revenue-free property in Part I of the general register of revenue-free lands until the circumstances of the case shall have been reported to the Board[1], and until the Board[1] shall have sanctioned such entry.

Board to each revenue-free property.

36. The Board[1] may decide what revenue-free lands shall be decide what included in each revenue-free property to be registered as such under included in this Act, and may from time to time direct that lands which are borne

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 37-38.)

on the register as forming one revenue-free property shall be divided and entered on the register as forming two or more such properties; and may similarly direct that revenue-free lands which are borne on the register as forming two or more revenue-free properties shall be united and entered as forming one revenue-free property.

The Board[1] may also direct that any lands which are improperly borne upon the general register of revenue-free lands shall be removed from such register, or shall be omitted from any new register of such lands which may be prepared.

37. Whenever it shall appear to the Collector that any land which Collector is not included in any revenue-free property entered in the existing may serve notice for general register should be included in any such property for the purposes inclusion of of this Act, the Collector may cause a notice to be served on the person lands in believed to be in possession of such lands in the manner prescribed by property. section fifty, and a general notice, to be published as prescribed by section forty-nine, to the effect that such lands will be so included if no objection be made within one month of the service of the said notice, or such longer period as the Collector may allow.

At the expiration of the said month or of such period, the Collector shall proceed to inquire into any objections which may have been made, and to pass such order as he may think fit in respect to the inclusion of the said lands in the said property for the purposes of this Act.

PART IV.

OF THE REGISTRATION AND MUTATION OF NAMES.

[2] 38. Every proprietor of an estate or revenue-free property or of Proprietor any interest therein, respectively, being in possession of such estate, and manager property, or interest at the commencement of this Act, [8]

within speci-

every joint proprietor of an estate or revenue-free property being in fied time. charge of such estate or property or of any interest therein, respectively, on behalf of the other proprietors thereof, at the commencement of this $Act, \lceil 3 \rceil$

and every person being manager of an estate or revenue-free property, or of any interest therein, respectively, on behalf of a proprietor thereof, at the commencement of this Act, [3]

shall, if his name and the character and extent of his interest have not already been registered, make application, in the manner hereinafter

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. Ill of this Code.

^[2] Sections 38 to 40 are obsolete. [8] i.e., the 23rd August, 1876.

(Secs. 39-41.)

provided, for the registration of his name and of the character and extent of his interest as such proprietor or manager to the Collector of the district on the general register of which such estate or property is borne, or to any other officer who may have been empowered by the Collector to receive such application within such time as the Lieutenant-Governor may fix as hereinafter provided.

Lieutenant-Governor may fix date before which proprietor and manager must apply for registration.

[1]39. The Lieutenant-Governor shall, within six months from the commencement of this Act,[2] fix[3] for each district the date or dates before which such proprietors and managers, being in possession of estates or revenue-free properties, or of any interest therein, respectively, at the commencement of this Act,[2] shall be required to apply for registration of their names and of the character and extent of their interests, under the last preceding section; and may at any time alter any date so fixed, provided that no date so fixed shall be later than five years after the said commencement.

Lieutenant-Governor may fix different dates in respect of different estates. [1]40. The Lieutenant-Governor may in any district, for the purposes of the last preceding section, fix[3] different dates in respect of estates and revenue-free properties, or in respect of different classes of estates and revenue-free properties, or in respect of different portions of the district:

Provided that no person shall incur any penalty or disability under this Act for failure to apply for registration of his name as such proprietor or manager as aforesaid until after the lapse of six months from the date on which the notice prescribed by the next succeeding section shall have been published in respect of his estate or property, or in respect of the class of estates or revenue-free properties within which his estate or property falls, or in respect of the portion of the district in which his estate or revenue-free property is situated.

Publication
of date
fixed by
LieutenantGovernor.

[4]41. Every date fixed by the Lieutenant-Governor as provided in the two last preceding sections shall be published by a notice in the Calcutta Gazette;

and also by notices to be posted up

at the Court or office of the Judge, the Magistrate and the Collector of the district, in respect of which such date is fixed;

at the Court or office of every Munsif, Subdivisional Officer and Sub-Registrar of Assurances in such district;

and at every police-station in such district;

and by proclamation to be made by beat of drum at the head-quarters of such district, and in every place in which a Subdivisional office is

^[1] Sections 38 to 40 are obsolete. [2] i. e., the 23rd August, 1876.

^[3] For orders made under ss. 39 and 40, see the Bihar and Orissa Local Statutory Pules and Orders, Vol. I, Part VI.
[4] Section 41 is obsolete.

(Secs. 42-44.)

situated, and in such other places as the Lieutenant-Governor may direct.

The officer in charge of every Court, office and police-station at which a notice is required to be posted up under this section shall certify to the Collector the date on which the notice was so posted up at his Court, office or police-station; and the latest date so certified shall be deemed to be the date of publication of the notice for the purposes of the two last preceding sections.

42. Every person succeeding, after the commencement of this Act[1], Person sucto any proprietary right in any estate or revenue-free property, whether ceeding to by purchase, inheritance, gift or otherwise;

every joint proprietor of an estate or revenue-free property assum- management of, estates to ing charge after such commencement of such estate or property, or of give inforany interest therein respectively, on behalf of the other proprietors within six thereof:

right in, or months.

and every person assuming charge after such commencement of any estate or revenue-free property, or of any interest therein respectively as manager,

shall, within six months from the date of such succession or assumption of charge, make application in the manner hereinafter provided to the Collector of the district on the general register of which such estate or property is borne, or to any other officer who may have been empowered by such Collector to receive such applications, for registration of his name and of the character and extent of his interest as such proprietor or manager.

43. Notwithstanding anything contained in section thirty-eight or Lieutenantthe last preceding section, the Lieutenant-Governor may in any district Governor may exempt exempt proprietors and managers of all or any estates which are liable proprietors to pay less than twenty rupees of land-revenue annually, and proprietors from obligaand managers of all or any revenue-free properties which consist of less imposed by than fifty acres of land from the obligations imposed by this Act in Act. respect of applying for registration of their names, and may at any future time withdraw such exemption and require such proprietors and managers to register their names.

44. Every person who holds a mortgage of any proprietary right in Mortgagee any estate may apply to the Collector for registration of his name as such for registramortgagee, and of the interest in respect of which he is such mortgagee, tion. and in such application shall specify whether he or the mortgagor is in possession. On receipt of such application the Collector shall proceed, as far as possible, according to the manner hereinafter prescribed in respect of applications for registration as proprietor.

(Secs. 45-49.)

Presentation of application.

45. Any application for registration under this Act may be presented by the applicant or by some person duly authorized by him in that behalf.

Manager to specify extent of interest of each person for whom

46. If the applicant under section thirty-eight or section forty-two is a joint proprietor in charge as aforesaid, or a manager, he shall in his application specify the name of the person or persons on behalf of whom he is in such charge, or on behalf of whom he is manager, and he manages. the character and extent of the interest of every such person.

Collector when to register applicant for registration as manager appointed by authority.

47. If the application under section thirty-eight or section forty-two be for registration of the name of the applicant as manager appointed by the Collector, the Court of Wards,[1] or by any Civil or Criminal Court, the Collector shall register the name of the applicant on proof being produced to his satisfaction that the applicant has been so appointed to be such manager.

Notice to objectors.

48. If the application be for registration otherwise than as manager appointed as mentioned in the last preceding section, and if it sets forth circumstances which would justify the Collector in registering the name of the person whose name is required to be registered, or if after further inquiry the Collector considers that such circumstances exist, he shall issue a notice requiring all persons who object to the registration of the name of the person whose name is required to be registered, or who dispute the character or extent of the interest in respect of which it is required to be registered, to give in a written statement of their objections, and to appear on a day to be specified in such notice, not being less than one month from the date of the publication thereof.

Publication of notice.

- 49. Such notice shall be published by affixing a copy of the same on or at all the following places:—
 - (a) the zamindari cutcherry (if any) of the estate or other place at which the rents are ordinarily received:
 - (b) some conspicuous place in at least one village appertaining to the estate to which the application relates, and if the estate comprises lands situated in more than one local division, then in at least one village in each local division containing such lands;
 - (c) the office or Court of every Collector, Subdivisional Officer, Judge and Munsif within whose jurisdiction, and every police-station within the jurisdiction of which any of the lands to which the application relates are known to be situated.

^[1] For power of Court of Wards to appoint a manager, see the Court of Wards Act, 1879 (Ben. Act 9 of 1879), s. 20, post, p. 288.

(Secs. 50-53.)

50. If the application alleges that the applicant has acquired posses- Notice to sion of the interest in respect of which he applies to be registered by transferor. transfer from any living person, a copy of such notice shall be served on the alleged transferor by tendering to the person to whom it may be directed a copy thereof attested by the Collector, or by delivering such copy at the usual place of abode of such person, or to some adult male member of his family; or, in case it cannot be so served, by posting such copy upon some conspicuous part of the usual or last known place of abode of such person.

In case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such way as the Collector issuing such notice may direct.

No fees or other costs shall be payable by the applicant in respect of the service or publication of the notice prescribed by this and the last preceding section.

51. No irregularity or omission in the publication or service of notice Effect of as required by the three last preceding sections shall affect the validity in publicaof any proceedings under this Act, unless it is proved to the satisfaction tion or of the Collector that some material injury was caused by such irregu- service of larity or omission.

52. On the day fixed in the notice issued under section forty-eight, Inquiry by or as soon thereafter as possible, the Collector shall consider any objections Collector. which may be advanced, and make such further inquiry as appears necessary to ascertain the truth of the alleged possession of, succession to, or transfer of, the estate, revenue-free property, or interest therein, in respect of which registration is applied for;

and if it appears to the Collector that the possession exists,

or that the succession or transfer has taken place, and that the applicant has acquired possession in accordance with such succession or transfer.

but not otherwise.

the Collector shall order the name of the applicant to be registered in the proper registers as proprietor or manager of the said estate, revenuefree property or interest therein:

Provided that any person to whom any proprietary right in an estate has been mortgaged may be registered as mortgagee, whether he be in actual possession or otherwise.

53. For the purpose of the inquiry mentioned in the last preceding Power to section, and of every inquiry held under this Act, the Collector may summon summon and enforce the attendance of witnesses[1][and any applicant and compel

production

^[1] These words in square brackets in s. 53 were inserted by the Bengal Landments. Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 10 (a), post, p. 768. 6 L. D.

(Secs. 53A-55.)

or his agent] and compel them to give evidence, and compel the production of documents, by the same means, and, as far as possible, in the same manner, as is provided [1][in respect of witnesses] by the Code of 23 of 1861. Civil Procedure. [2]

Record of evidence in inquiries.

[3]53A. The evidence of every person examined by the Collector in any inquiry from which an appeal lies under this Act shall be recorded in the same manner as is provided in the case of a Civil Court by the Code of Civil Procedure. [4]

14 of 1882.

Payment of costs.

54. All costs of any inquiry or proceeding held before the Collector under this Act shall, except as provided in section fifty, be payable by the parties concerned; and the Collector may pass such orders as he shall think fit in respect of the payment of such costs.

Dispute as to posses. sion, succession or acquisition by transfer.

55. [5] [If the applicant's possession of, succession to, or acquisition by transfer of, the extent of interest in respect of which he has applied to be registered is disputed by, or on behalf of, any person making a conflicting claim in respect thereof, and if it is not proved to the satisfaction of the Collector that any person is in possession of the interest in dispute, the Collector shall determine summarily the right to possession of the same, and shall deliver possession accordingly, and shall make the necessary entry in the registers;

or if, in the opinion of the Collector, the dispute be one which can more properly be determined by a Civil Court, the Collector shall refer the matter in dispute to the principal Civil Court of the district for determination as hereinafter provided:

Provided that if the applicant's possession of any extent of interest in accordance with his application be not disputed, or if such possession be proved to the satisfaction of the Collector, the Collector may register the said applicant's name in respect of such extent of interest, and may at the same time make a reference, as hereinafter provided, to the Civil Court for determination of any dispute as to any further extent of interest in respect of which the applicant has applied to be registered, but in respect of which the right of the applicant to be registered is disputed, and is not proved to the satisfaction of the Collector.

^[1] These words in square brackets in s. 53 were substituted for the words "in the

case of a Civil Court," by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 10 (b), post, p. 768.

[2] Act 23 of 1861 was repealed and re-enacted by Act 10 of 1877, which was repealed and re-enacted by Act 14 of 1882. The latter Act has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

^[3] Section 53A was inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 11, post, p. 768.

^[4] Act 14 of 1882 was repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158

^[6] This clause in square brackets in s. 55 was substituted for the original clause by the Bengal Land Registration (Amendment) Act, 1878 (Ben. Act 5 of 1878), post,

(Secs. 56-59.)

56. In any case of disputed possession of, succession to, or acquisi- In cases of tion by transfer of, the extent of any interest in respect of which applipossession. cation is made under the last preceding section, the Collector may appoint a receiver to collect the rents of the extent of interest in dispute, appoint and from the sums so collected shall be paid the expenses of management and the revenue due to the Government; and the surplus shall be held in deposit in the Collector's treasury, and shall be paid over to the person who shall be registered by the Collector, or, under the order of a Civil Court, in respect of the extent of interest in dispute.

disputed etc., Collector may

57. Every order of a Collector passed under the first clause of section Effect of fifty-five shall be of the same force and effect as an order passed by the order. Judge under section 4 of Act 19 of 1841[1] (an Act for the protection of movable and immovable property against wrongful possession in cases of succession), determining summarily the right to possession delivering possession accordingly;

and no proceedings shall be taken by any Civil Court under the said Act in respect of any claim or dispute which has been determined by an order of the Collector as aforesaid.

58. In making a reference to the Civil Court under section fifty-five, Procedure the Collector shall state, for the information of the said Court, in on reference writing under his hand,-

under section fifty-five.

- (1) the name of the estate or revenue-free property to which the reference applies, together with the numbers which it bears on the general register and (if an estate) on the revenueroll of the district:
- (2) the names of all the persons who now stand registered on the general register as proprietors, managers or mortgagees of such estate or property, with the character and extent of the interest in respect of which each stands registered;
- (3) the name of the applicant for registry;
- (4) the character and extent of the interest in dispute:
- (5) the circumstances of the case, as far as they are before the Collector, and the reasons which have led him to make the reference.

59. On receipt of such reference the said principal Civil Court of the Procedure district may either proceed to determine the matter or may transfer the on receipt of reference. matter for determination to any other competent Civil Court in the district.

The said principal Civil Court, or the Court to which the matter is transferred, shall cite the parties concerned, and give notice of the time

^[1] The Succession (Property Protection) Act, 1841. It was repealed and re-enacted by the Indian Succession Act, 1925 (Act 39 of 1925), printed in General Acts, 1924-27, Ed. 1928, p. 239, and this reference should now be construed as a reference to s. 194 of this Act—see s. 8 of the General Clauses Act, 1897 (10 of 1897), in General Acts, 1897 (10 of 1897), in General Acts, 1887-97, Ed. 1928, p. 344.

(Secs. 60-64.)

at which the matter will be heard; and, after expiration of the time so fixed, shall determine summarily the right to possession in respect of the interest in dispute (subject to regular suit), and shall deliver possession accordingly.

Judge may appoint curator.

60. If it shall appear to the Judge of the Court by which the matter is heard that danger is to be apprehended of the misappropriation or waste of the property before the summary suit can be determined, such Judge may appoint curators for the care of the property, and may exercise all or any of the powers mentioned in sections 5 to 13 (both inclusive) of Act 19 of 1841.[17]

Costs.

61. The said Court may make such order as it shall think fit with regard to the payment by the parties of the cost of the inquiry and proceedings:

Provided that no costs shall be recoverable from the parties on account of the issue of notices citing the parties and fixing a date for the first hearing of the case.

62. The summary decision of the Court under section fifty-nine shall have no other effect than that of settling the actual possession; but for this purpose it shall be final, not subject to any appeal or order for review.

63. The Court shall certify to the Collector its determination as to the right of possession, and the Collector shall thereupon make the necessary entries in the proper registers.

64. Fees at the following rates shall be levied by the Collector on the registry under this Act of any transfer—

- (1) in the case of revenue-paying lands, one quarter or four annas per centum on the annual revenue payable to Government from the extent of interest transferred;
- (2) in the case of revenue-free lands, two-and-a-half per centum on the amount of the annual produce of the extent of interest transferred, such annual produce being the amount of the rents received and receivable on account of the year preceding the year in which the transfer may be registered;

[2] [(3) in the case of a fee simple waste-land lot which is revenuefree and for which no rents are received or receivable, two-and-a-half per centum on one-fifteenth part of the value, such value being taken to be-

(a) in the case of a transfer by sale, the purchase-money, and.

Effect of. summary decision of Court. Court to certify its determination to Collector. Collector to levy fees on transfers.

[2] Clause (3) was inserted, in s. 64, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 12 (1), post, p. 768.

^[1] The Succession (Property Protection) Act, 1841. It was repealed and re-enacted by the Indian Succession Act, 1925 (Act 39 of 1925), in General Acts, 1924-27, Ed. 1928, p. 296, and this reference should be construed as a reference to s. 194 of this Act—see s. 8 of the General Clauses Act, 1897 (10 of 1897), in General Acts, 1887-97, Ed. 1928, p. 344.

(Secs. 65-67.)

(b) in any other case, the value determined by the Collector: Provided that no fee for the registry of any one transfer shall exceed one hundred rupees.

[1] [Provided also that the [2] [Commissioner of the Division] may, by general or special order, remit the payment of fees payable for any transfer.

Such fees shall be levied from the person in whose favour the transfer is registered.

All fees levied under this section shall be carried to the account of Government.

65. Whoever, being required by this Act to apply for the registration Penalty for of his name and the extent of his interest in any estate or revenue-free comply with property, voluntarily or negligently omits to make such application Act. within the prescribed time, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees for such omission, and to such further daily fine as the Collector may think fit to impose, not exceeding fifty rupees, for each day during which such person shall omit to apply for such registration after a date to be fixed by the Collector in a notice requiring such person to apply for registration.

Such notice shall be served in the manner prescribed in section fifty, and the date before which such person is required to apply for registration shall not be less than one month after service of such notice.

66. The Collector may proceed from time to time to levy any amount Fine may which has become due in respect of any such fine, notwithstanding that be levied notwithan appeal against the order imposing such fine may be pending:

standing

Provided that whenever the amount levied under any such order appeal. shall have exceeded five hundred rupees, the Collector shall report the case especially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by authority of the said Commissioner.

67. Notwithstanding anything contained in section sixty-five, no fine No penalty shall be imposed by the Collector under the said section on any person who applies on the ground that such person has failed to make application for regis- suo motu. tration of his name within the time fixed by the Lieutenant-Governor under section thirty-nine or forty,

or on the ground that such person has failed to apply for registration of his name within the time prescribed by section forty-two,

if such person shall, at any time after the expiration of the time fixed or prescribed as aforesaid, of his own motion, and otherwise than after

^[1] This proviso was inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 12 (2), post, p. 768.

[2] The words in square brackets were substituted for the word "Board" by the Bihar and Orissa Decembralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch. Pt. II—see Vol. III of this Code.

(Secs. 68-70.)

the issue of a requisition by the Collector in that behalf, present such application as is required by this Act for the registration of his name and of the character and extent of his interest.

Liabilities of proprietors and managers. 68. Save as is provided in section 90 of the Code of Criminal Pro- 10 of 1872. cedure, [1] all the recorded proprietors and managers of an estate or revenue-free property shall be deemed to be jointly and severally liable for the discharge of any duties and obligations which are, by any law for the time being in force, imposed upon the proprietors of such estate or property;

and all persons who are required by this Act to apply for registration shall, from the date on which the obligation so to register is imposed on them respectively by this Act, be deemed to be liable for the discharge of any duties and obligations which are by any such law as aforesaid imposed upon the proprietors of the estate or property in respect of which they are required to apply for registration respectively.

PART V.

OF THE OPENING OF SEPARATE ACCOUNTS IN RESPECT OF SHARES.

Opening of separate account of share of applicant under Act 11 of 1859.

69. Notwithstanding anything contained in Act 11 of 1859[2] (an Act to improve the law relating to sales of land, etc.), from the commencement of this Act[3] no separate account shall be opened under the provisions of section 10 or of section 11 of the said Act in respect of the share of any applicant under the said sections otherwise than for a share corresponding with the character and extent of interest in the estate in respect of which such applicant is recorded as proprietor or manager under this Act.

Proprietor holding undivided interest in specific [4]70. When a proprietor of a joint estate, who is recorded as proprietor of an undivided interest held in common tenancy in any specific portion of the land of the estate, but not extending over the whole estate, desires to pay separately the share of the Government revenue which is

^[1] Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to s. 45 of that Code—see s. 3 thereof.

^[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code. [3] i.e., the 23rd August, 1876.

^[4] As to the protection from sale of shares of estates for which a separate account has been opened under s. 70, and which are under the charge of the Court of Wards, see the Court of Wards Act, 1879 (Ben. Act 9 of 1879), Part III, post, p. 288.

As to separate liability for payment of local cess when a separate account has been opened under s. 70, see the Cess Act, 1880 (Ben. Act 9 of 1880), s. 44, post, p. 391.

As to separate liability for payment of sums due under the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), when a separate account has been opened under s. 70 of the present Act, see ss. 71 and 72 of the Act of 1882, post, pp. 477 and 478.

(Secs. 71-72.)

due in respect of such interest, he may submit to the Collector a written lands may application to that effect,

apply for

The application must contain a specification of the land in which he account holds such undivided interest, and of the boundaries and extent thereof, together with a statement of the amount of Government revenue heretofore paid on account of such undivided interest.

On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in section 10 of Act 11 of 1859.[1]

'In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

[2][Notwithstanding anything hereinbefore contained, no application ander this section or under section 10 or section 11 of the Bengal Land-revenue Sales Act, 1859,[1] shall be received unless it is accompanied by a fee of two rupees.

71. Section 12 of the said Act 11 of 1859[1] shall apply to every Sections 12. application made under the last preceding section; and the effect and 13 and 14 of consequences of opening a separate account under the last preceding Act 11 of section shall be such and the same as are described in section 13 and in applied. section 14 of Act 11 of 1859.[1]

72. Whenever any share in respect of which a separate account has Application been opened by the Collector under section 10 or section 11 of the said to close Act 11 of 1859,[1] or under section seventy, shall no longer correspond account. with the character and extent of interest held in the estate by any one proprietor or manager, or jointly by two or more proprietors or managers,

any proprietor or manager whose name is borne on the general register under this Act as proprietor or manager of any interest in the share in respect of which such separate account is open, may submit to the Collector a written application,

setting out the circumstances under which such share no longer corresponds with the extent of interest held in the estate by any recorded proprietor or manager, or jointly by two or more recorded proprietors or managers,

and specifying the manner in which such share has become broken up and distributed among the proprietors of the estate,

The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.
 This paragraph was added to s. 70 by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 13, post, p. 768.

(Secs. 73-74.)

and praying that the separate account standing open in respect of such share shall be closed,

and, if he so desire, praying that another separate account be opened in respect of any other share or shares which were wholly or partly included in the share in respect of which the previous separate account was open.

Illustration.

In a certain estate separate accounts have been opened under section 10 of Act 11 of 1859[1] for the 4 annas share of A, and also for the 5 annas share of B, the accounts of the remaining 7 annas shares being kept jointly in the names of the remaining proprietors C, D and E.

In course of time X has inherited A's 4 annas share, and also C's interest in the

7 annas share which amounted to 3 annas; X has also acquired by purchase 2 annas out of B's 5 annas share, so that the interests in the estate are now distributed as follows :~

,.. 9 annas. З" В D & E ...

X, if a recorded proprietor of the estate, may apply to the Collector to close the separate account which is open in respect of A's 4 annas share and also the separate account which is open in respect of B's 5 annas share, as neither of these shares corresponds with the extent of interest held by any one proprietor, or held jointly by two or more proprietors in the estate; and in the same application X may apply for the opening of a separate account in

respect of the 9 annas share which he now holds.

Any of the other proprietors might also make a similar application.

Separate opened.

73. On receipt of such application the Collector shall cause a copy account may of the same to be published in the manner provided in section 10 of Act and another 11 of 1859^{-1} ; and if within six weeks from the date of such publication no objection is made by any other recorded proprietor of the estate, the Collector shall close the separate account which then stands open, and shall open a separate account with the applicant as required by him under section 10 or section 11 of Act 11 of 1859[1] or under section seventy, as the case may be.

Procedure in case of objection

74. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the share in respect of which any separate account is open as aforesaid has not been broken up, and does still correspond with the character and extent of interest held by any one proprietor or manager, or jointly by two or more proprietors or managers,

or object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him,

or (when the application is in respect of a specific portion of the land of an estate, or in respect of an undivided interest held in common tenancy in any specific portion of the land of the estate) object that the amount of Government revenue stated by the applicant to have been heretofore paid on account of such portion of land, or on account of the

(Secs. 74A-77.)

applicant's undivided interest therein, is not the amount which has been recognized by the other sharers as the Government revenue thereof, the Collector shall refer the parties to the Civil Court, and shall

suspend proceedings until the question at issue is judicially determined.

[1]74A. Notwithstanding anything contained in the foregoing Power of sections, if the Collector becomes aware, otherwise than after receipt of close a sepaan application under section 72, that any separate account opened under rate account 11 of 1859, section 10 or section 11 of the Bengal Land-revenue Sales Act, 1859,[2] otherwise than upon or under section 70 or section 72 of this Act, in respect of any estate application. does not represent existing facts, he may, after service of a notice on the recorded proprietor in the manner prescribed by section 50, and after hearing any objection which may be preferred, close the account.

PART VI.

Miscellaneous.

75. The Collector shall supply an extract from any register Collector to mentioned in this Act to any person who may apply for the same, subject furnish exto the payment of such fees for searching and copying as may be tract from register. prescribed by the Board. [3]

76. If in any district any register prescribed by this Act has not Collector to been prepared and kept up in the vernacular language and character of translation the district, the Collector shall be bound, together with any English of extract. extract which may be furnished under the last preceding section, to furnish a translation of the same in the vernacular language and written in the vernacular character of such district to any one who may demand such translation, and no further charge shall be made in respect of the furnishing of such translation than might have been charged in respect of the English extract furnished under the said section.

77. Whenever any change shall be made by order of competent Changes in authority in the names of the recorded proprietors or managers of any proprietors, estate or revenue-free property, or in the character or extent of the etc., and interest of any such proprietor or manager as entered in any register extent of interest to mentioned in this Act, so soon as the order under which such change in be notified the entry may have been made shall have been confirmed on appeal, or on estate.

^[1] Section 74A was inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 14, post, p. 768.

^[2] The Bengal Land-revenue Sales Act, 1859 (11 of 1859). It is printed in Vol. I of this Code.

^[3] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 78-81.)

so soon as the period for presenting an appeal against such order shall: have expired without the presentation of an appeal, the Collector shall cause a notice of such change to be posted up at his office, at the office of every Subdivisional Officer within whose jurisdiction any lands of the estate or revenue-free property concerned are situated, and at such places as he may think fit on the estate or property;

and every such notice shall set out the name of every proprietor and manager of the estate or revenue-free property[1] [who is] concerned, and the character and extent of the interest of every such proprietor and manager as it stands recorded on the general register on the date of the issue of the notice.

No person bound to registered.

78. No person shall be bound to pay rent to any person claiming pay rent to such rent as proprietor or manager of an estate or revenue-free property claimant not in respect of which he is required by this Act to cause his name to be registered, or as mortgagee, unless the name of such claimant shall have been registered under this Act;

Payment to each of several proprietors, in common tenancy.

and no person being liable to pay rent to two or more such proprietors, managers or mortgagees holding in common tenancy shall be bound to pay to any one such proprietor, manager or mortgagee more etc. holding than the amount which bears the same proportion to the whole of such rent as the extent of the interest in respect of which such proprietor, manager or mortgagee is registered bears to the entire estate or revenuefree property.

Indemnity to persons paying rent proprietor.

79. The receipt of any proprietor, manager or mortgagee whose name and the extent of whose interest is registered under this Act shall to registered afford full indemnity to any person paying rent to such proprietor, manager or mortgagee.

Payment of to proprietors jointly.

80. Whenever any sum of money shall be payable by the Collector sums payable to the proprietors of any estate or revenue-free property jointly (otherwise than under the Land Acquisition Act, 1870)[2], the Collector may 10 of 1870. pay to any one or more recorded proprietors or managers thereof respectively such portion of the said sum as may be proportionate to the extent of the interest in respect of which each such proprietor or manager is registered, and the receipt of each such proprietor or manager shall afford full indemnity to the Collector in respect of any sum so paid.

Saving of written contracts from person receiving money.

81. Nothing contained in the three last preceding sections shall be held to interfere with the conditions of any written contract, or to and recovery prevent any person deeming himself entitled to any sum of money from

^[1] The words "who is" in s. 77 were inserted by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 15, post, p. 769.

^[2] Act 10 of 1870 has been repealed and re-enacted by the Land Acquisition Act, 1894 (1 of 1894), and this reference should now be construed as a reference to the latter Act—see s. 2 (5) thereof, in General Acts, 1887-97, Ed. 1928, p. 217.

(Secs. 82-85.)

recovering such sum by due process of law from any other person who has received the same.

- 82. Every amount which may become due to the Collector under the Every provisions of this Act in respect of any expenses incurred, of any fees amount due payable, of any notices served, of any costs payable by any party, or of be a any fines imposed, shall be deemed to be a demand
- 83. The Collector may by a notice require the proprietor or manager Collector of any estate or revenue-free property to name such estate or property by may require a distinctive name, and in case of failure of such proprietor or manager to name to comply with the requisition within the time fixed by the Collector, estate. nay name such estate or property.

[2] [The notice required under this section shall be served in the manner prescribed by section 50.]

84. The Collector may, by a special or a general order, delegate to Collector any Assistant Collector, Deputy Collector or Sub-Deputy Collector, the gate duties. performance of any duty, and the exercise of any function, which the Collector is required or empowered to perform or exercise under this Act, except in respect of appeals.

and any Assistant, Deputy or Sub-Deputy Collector to whom any duty or function is so delegated may exercise all the powers of a Collector under this Act, except in respect of appeals.

85. Every order passed under this Act by any revenue officer below Appeal. the rank of the Collector of the district (not being an officer specially vested with appellate powers as hereinafter mentioned) shall be appealable to the Collector of the district, or to any officer who may have been specially vested by the Government with special appellate powers in this behalf,

and there shall be no further appeal from any order so passed in appeal confirming the order appealed against,

but an appeal shall lie to the Commissioner of the Division against every order so passed in appeal which modifies or reverses the order appealed against.

Every order passed by the Collector of the district, or by any officer especially vested with appellate powers as aforesaid, being passed otherwise than on appeal from the order of another officer, shall be appealable to the Commissioner of the Division.

Every appeal to the Collector shall be presented within fifteen days of the date of the order appealed against;

^[1] The reference to the Bengal Land-revenue Sales Act, 1868 (Ben. Act 7 of 1868), was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), and is omitted. As to recovery of "demands," see now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 3 (6) and Sch. I, in Vol. III of his Code.

^[2] The words in square brackets were added to s. 83, by the Bengal Land Regis tration (Amendment) Act, 1906 (Ben. Act 2 of 1906), s. 7, post, p. 768,

(Secs. 86-89.)

and every appeal to the Commissioner shall be presented to the Commissioner, or to the Collector for transmission to the Commissioner. within thirty days of the order appealed against;

and every appeal presented after the lapse of the time fixed by this section may be summarily rejected, unless sufficient cause shall be shown to the satisfaction of the appellate authority for admitting the appeal after the lapse of such time.

Every order passed by any officer subordinate to a Commissioner shall be subject at any time to revision and modification by such Commissioner;

and every order passed by any such officer or by such Commissioner shall be subject at any time to revision and modification by the Board.[1]

86. In computing the period of limitation prescribed for an appeal, the day on which the order complained of was made, and the time requisite for obtaining a copy of the same shall be excluded.

87. The Lieutenant-Governor may from time to time vest any officer other than the Collector of the district with special appellate powers officer with under this Act; and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

88. Within four months of the date[2] on which this Act comes into Board may make certain force, the Board[1] shall make general rules[3] consistent with this Act, to regulate—

> the form in which registers under this Act are to be kept; the procedure as to the presentation, admission and verification of applications for registration under Part IV, and as to inquiries under section fifty-two,

and generally for the purposes of this Act.

The Board[1] may from time to time cancel or alter any such rules.

- 89. Nothing contained in this Act, and nothing done in accordance with this Act, shall be deemed to—
 - (a) preclude any person from bringing a regular suit for possession of, or for a declaration of right to, any immovable property to which he may deem himself entitled;
 - (b) render the entry of any land in the registers under this Act as revenue-free an admission on the part of Government of the right of the person in whose name such land may be entered, or an admission of the validity of the title under which the said land is held revenue-free;

[3] For a list of forms prescribed under s. 88, and for rules made under that section, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

Exclusion of time in case of appeals. Lieutenant-Governor may vest special appellate powers.

Baving clause.

rules.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code. [2] i.e., the 23rd August, 1876.

(c) affect the rights of the Government or of any person in respect of any immovable property or of any interest, except as otherwise expressly provided therein.

SCHEDULE OF REGULATIONS REPEALED.

Rep. by the Amending Act, 1903 (1 of 1903.)

BENGAL ACT 5 OF 1878.

[THE BENGAL LAND REGISTRATION (AMENDMENT) ACT, 1878.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. New clause substituted in section 55 of Bengal Act 7 of 1876.
- 2 (Repealed.)

BENGAL ACT 5 OF 1878.

[THE BENGAL LAND REGISTRATION (AMENDMENT) ACT, 1878.][1]
(29th May, 1878.)

An Act to amend Bengal Act 7 of 1876.

Whereas it is expedient to amend Bengal Act. 7 of 1876; It is Preamble. enacted as follows:—

1. For the first clause of section 55 of the said Act the following Clause substituted:—

substi

substituted in section 55 of Ben. Act 7 of 1876.

(Printed ante, p. 258.)

2. (Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1878, Part IV, p. 79, and for Proceedings in Council, see *ibid*, 1878, Supplement, pp. 375 and 400.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum and the Kolhan in the District of Singhbhum, in the Chota Nagpur Division—see Vol. IV, Part III.

The Act is in force in the Sonthal Parganas—see Vol. IV, Part IV; but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (3), in Vol. I of this Code.

BENGAL ACT 9 OF 1879.

(THE COURT OF WARDS ACT, 1879.)

CONTENTS.

PART I.

PRELIMINARY.

PREAMBLE. SECTION.

> 1. Short title. Extent.

(Commencement.) Repealed.

Repeal and savings.
 Interpretation.

4. Saving of Act 34 of 1858 and of jurisdiction of High Court as respects infants.

PART II.

CONSTITUTION, JURISDICTION AND POWERS OF THE COURT OF WARDS.

5. Constitution and general duties of Court of Wards.

6. Disqualified proprietors.

7. Jurisdiction of Court over disqualified proprietors.

8. Court when bound to give up charge.

9. Discretion of Court as to taking and keeping charge.
10. Application by Civil Court to Court of Wards to take charge.

10A. Notice to creditors.

10B. Creditors to furnish full particulars and documents.

10C. Stay of proceedings of Civil Courts. 10D. Adjudication of claims.

10E. Relinquishment of inextricably involved estates.

11. Procedure when any of joint proprietors ceases to be disqualified.

12. Withdrawal from charge by Court.

13. Procedure when succession to property of ward disputed.

13A. Power of Court to retain charge of property of disqualified proprietor until discharge of debts.

14. General powers of Court.

15. Exercise through others of powers conferred on Court. Delegation of powers.

16. Establishments and expenses

17. (Repealed.)
18. Power to manage property.

19. When Court may order property to be formed into separate estate.

20. Appointment of managers and guardians.

21. Custody, education and residence of wards.

22. Allowance for ward and his family.

PART III.

PROTECTION FROM: SALE OF CERTAIN ESTATES.

23. Estate under charge of Court exempt from sale. Recovery of arrears of revenue due at time when estate ceases to be under charge of Court.

SECTION.

- 23A. Conditions under which estate may be sold for arrear of revenue accrued under
- 24. Restriction on sale for arrears of revenue of estate belonging to minor. Power of Collector to attach such estate.
- 25. Section 24 not to apply unless notice given.
- 26. Application of proceeds of estate farmed under section 24.

PART IV.

ASCERTAINMENT OF DISQUALIFICATION.

- Procedure for ascertaining and declaring disqualification.
 Power to enforce provisions of Act without report.
- 29. Powers of Collector as to preservation of property on death of a proprietor whose heirs should be declared disqualified. Recovery of expenses if property is not taken under charge of Court.

- 30. Production of minor proprietor, and order for his temporary custody.
 31. Application to Civil Court in case of lunatics.
 32. Application to Civil Court to make inquiry regarding disqualification on ground of physical defect or infirmity.
- 33. Similar application when proprietor resides within original jurisdiction of High Court or beyond Bengal.
- 34. Powers and duties of Courts when inquiry is instituted under section 32 or 33.
- 34A. Recovery of expenses incurred by Collector under sections 31 to 33.

PART V.

PROCEDURE AFTER ASCERTAINMENT OF DISQUALIFICATION.

- 35. Order declaring person or property to be under charge of Court. 36. Collector to take possession of movable property.
- 37. Additional powers of Collector.

PART VI.

MANAGEMENT AND GUARDIANSHIP.

- 38. Collector when to be deemed manager.
- 39. Powers of manager.
- 40. General duties of manager.
- 41. Specific duties of manager.

- 42. General duties of guardian.
 43. Specific duties of guardian.
 44. Exclusion of certain interested persons from guardianship.
- 45. Who to be guardian of female ward. 46. Recovery of sums due to the Court.
- 47. Court may order guardian or manager to make over property.
- 48. Application of moneys received by manager.
- (Amount to be expended on improvement.) Repealed.
- 49. Disposal of surplus moneys. 50. Power to invest surplus.

PART VII.

Surrs.

51. Manager or Collector to be next friend or guardian in suits by or against ward. 52. Power of Court of Wards to nominate another person to be next friend or guardian for suit.

SECTION.

- 53. Payment of costs.
- 54. Service of process against wards.
- 55. Suits not to be brought on behalf of wards unless authorised by the Court of Wards.
- 56. Saving of suits in High Court.

PART VIII.

PENALTIES.

- 57. For disobeying certain orders of Collector. 58. For disobeying orders under section 47.
- 58A. Penalty on farmer neglecting to furnish accounts, etc. 59. For disobeying order of Court. 59A. Persons employed by Court to be "public servants".

PART IX.

MISCELLANEOUS.

- 60. Disabilities of wards.
- 60A. Exemption of wards' property from execution proceedings in certain cases. 60B. Certain persons to be deemed to be wards.
- 61. Adoption by ward invalid without consent of Lieutenant-Governor.

- 62. (Repealed.)
 63. Recovery of interest on arrears of rent.
 64. Record of reasons when penalty imposed under section 57 or 58.
- 64A. Publication of notices.
- 65. Procedure when Court's jurisdiction ceases.
 65A. Recovery of expenses after release of property.
- 66. Judicial powers of Collector in making inquiries.

- 67. Appeals.
 68. Control by Court.
 69. Control by Lieutenant-Governor.
 70. Power to Court to make rules.

BENGAL ACT 9 OF 1879.

(THE COURT OF WARDS ACT, 1879.)[1]

(30th July, 1879.)

An Act to amend the law relating to the Court of Wards.

Whereas it is expedient to amend the law relating to the Court of Preamble.

[1] LEGISLATIVE PAPERS .-- For Statement of Objects and Reasons, see Calcutta Gazette, 1878, Part IV, p. 75; for Report of Select Committee, see ibid, 1879, Part IV, p. 31; for further Report of Select Committee, see ibid, p. 47; and for Proceedings in Council, see ibid, 1878, Supplement pp. 317, 343 and 402, ibid, 1879, Supplement, pp. 6, 332, 400 and 441.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal including the Scheduled Districts—see s. 1. It has also (with Bengal Act 3 of 1881)

been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum and Pargana Dhalbhum, the Kolhan and the Porahat Estate in the District of

Singhblum in the Chota Nagpur Division,—see Vol. IV, Part III.

The Act (with Bengal Act 3 of 1881 and Act 4 of 1892) is in force in the Sonthal Parganas (see Vol. IV, Part IV), but its application is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

ANNOTATED REPRINT.—For an annotated reprint of this Act, see the Bihar and

Orissa Wards' Manual, 1927, p. 15.

Part III of the Act is reprinted in the Bihar and Orissa Sale Law Manual, 1923, pp. 193-95.

AMENDING ACTS.—Bengal Act 3 of 1881 and Act 4 of 1892 are to be read with and taken as part of Bengal Act 9 of 1879—see Ben. Act 3 of 1881, s. 1, post, p. 451, and Act 4 of 1892, s. 1, in Vol. I of this Code.

OTHER ACTS AS TO WARDS .- As to wards, see also-

the Indian Majority Act, 1875 (9 of 1875), in General Acts, 1873-86, Ed. 1928, p. 67;

the Guardians and Wards Act, 1890 (8 of 1890), in General Acts, 1887-97, Ed. 1928,

p. 85; and the Indian Lunacy Act, 1912 (4 of 1912), in General Acts, 1910-13, Ed. 1928,

The Bengal Tenancy Act, 1885 (8 of 1885), does not affect any enactment regulating the procedure for the realisation of rents in estates under the management of the Court

of Wards—see Act 8 of 1885, s. 195 (b), in Vol. I of this Code.

As to the appointment of the Court of Wards to be a Manager under the Bengal

Tenancy Act, 1885, see ss. 95 and 97 of that Act, in Vol. I of this Code.

As to the application of the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), to arrears of rent or of other demands recoverable as rent, in the case of property under the charge of the Court of Wards, see s. 3 (6) and Sch. I of that Act, in Vol. III of this Code.

FURTHER ENACTMENTS.—The Bengal Wills and Intestacy Regulation, 1799 (5 of 1799), does not affect the jurisdiction of the Court of Wards-see s. 8 of that Regulation, in Vol. I of this Code.

As to the application of Ben. Act 9 of 1879 to settled estates, see the Bengal Settled Estates Act, 1904 (Ben. Act 3 of 1904), ss. 34, 38, printed, post, pp. 749, 751. As to the payment of income-tax by the Court of Wards, see the Indian Income-

tax Act, 1922 (11 of 1922), s. 41, in General Acts, 1921-23, Ed. 1928, p. 107.

(Secs. 1-3.)

Wards within the territories under the administration of the Lieutenant-Governor of Bengal[1]; It is enacted as follows:—

PART I.

Preliminary.

Short title.

1. This Act may be called the Court of Wards Act, 1879:

Extent.

It extends to all the territories under the administration of the Lieutenant-Governor of Bengal,[1] including the Scheduled Districts of Bengal as defined in the Scheduled Districts Act, 1874[2].

14 of 1874.

(Commencement.) Rep. by the Amending Act, 1897 (5 of 1897).

Repeal and savings.

2. Bengal Act 4 of 1870 (the Court of Wards Act), section 11 of Act 35 of 1858[8], sections 12, 14 and 15 of Act 40 of 1858[4], and so much of section 21 of Act 40 of 1858[4] as provides that the Civil Court may direct the Collector to take charge of an estate, are hereby repealed.

All persons and properties which at the commencement of this Act are under the charge of the Court of Wards, as constituted by Bengal Act 4 of 1870, shall be deemed to be under the charge of the Court of Wards, as constituted by this Act.

And all persons and properties which at the commencement of this Act are under the charge of the Collector by virtue of an order of the Civil Court under section 11 of Act 35 of $1858[^3]$, or under section 12, section 14 or section 21 of Act 40 of $1858[^4]$, shall from such commencement be deemed to be under the charge of the Court of Wards.

And all rules prescribed, orders or appointments made, and agreements executed under the Court of Wards Act, 1870, and now in force, Ben. Act 4 shall (so far as they are consistent with this Act) be deemed to be of 1870. respectively prescribed, made and executed under this Act.

And all orders and appointments made by Collectors under Act 35 of 1858[3] or Act 40 of 1858,[4] and now in force, shall (so far as they are consistent with this Act) be deemed to be made under this Act.

Interpretation. 3. In this Act, unless there be something repugnant in the subject or context,—

" Collector."

"Collector" includes any officer in charge of the revenue-jurisdiction of a district:

[5] The remainder of s. 2 (as to pending suits and proceedings) was repealed by the Amending Act, 1903 (1 of 1903), in Vol. I of this Code, and is omitted.

^[1] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[2] Printed in General Acts, 1873-86, Ed. 1928, p. 32.
[3] The Lunacy (District Courts) Act, 1858. It has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), printed in General Acts, 1910-13, Ed. 1928,

p. 245.

[4] The whole of Act 40 of 1858 was repealed by the Guardians and Wards Act, 1890 (8 of 1890), printed in General Acts, 1887-97, Ed. 1928, p. 87.

(Secs. 4-6.)

"the Court" means the Court of Wards;

" the

or, when the Court of Wards has delegated any of its powers to a Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they are delegated:

"estate" means all lands which are borne on the revenue-roll of "Estate." a Collector as liable for the payment of one and the same demand of land-revenue[1][and includes a share in or of an estate other than an undivided share held in coparcenary as the property of a Hindu joint family governed by the Mitakshara or Mithila law]:

"minor" means a person who has not completed his age of "Minor."

twenty-one years:

" Section."

"section" means a section of this Act:

- "ward" means any person who is under the charge of the Court "Ward." of Wards, or whose property is under such charge.
- 4. Nothing contained in this Act shall affect any of the provisions Saving of of Act 34 of 1858[2] or the jurisdiction, as respects infants, of any High of 1858 and of jurisdiction of High Court

as respects infants.

PART II.

Constitution, Jurisdiction and Powers of the Court of Wards.

5. The Board of Revenue[8] shall be the Court of Wards for the territories to which this Act extends.

It shall deal with every person and every property of which it may Constitution take or retain charge under this Act, or which may be placed under its and general charge by order of a competent Court, in accordance with the provi-Court of wards.

- 6. Proprietors of estates shall be held disqualified to manage Disqualified their own property when they are—
 - (a) females declared by the Court incompetent to manage their own property;
 - (b) persons declared by the Court to be minors;

^[1] The words in square brackets in the definition of "estate" were added by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 2, in Vol. I of this Code.

^[2] The Lunacy (Supreme Courts) Act, 1858. It has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), in General Acts, 1910-13, Ed. 1928, p. 245.

^[3] As to the present constitutior and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code

(Secs. 7-9.)

- (c) persons adjudged by a competent Civil Court to be of unsound mind, and incapable of managing their affairs;
- (d) persons adjudged by a competent Civil Court to be otherwise rendered incapable by physical defects or infirmities of managing their own property;
- [1] [(e) persons as to whom the [2] [Court] has declared, on their own application, that they are disqualified, and thatit is expedient in the public interest that their estates should be managed by the Court.]

Jurisdiction of Court over disqualified proprietors.

- 7. Whenever the sole proprietor of an estate, or all the joint proprietors of an estate are disqualified as provided in the last preceding section, the Court shall have power to take charge of all the property of every such proprietor or joint proprietor within its jurisdiction, and of the person of any such proprietor or joint proprietor who is resident within its jurisdiction; and also of the person and property of any minor member of the family of any such proprietor or joint proprietor who has an immediate or reversionary interest in the property of such proprietor or joint proprietor:
- [8] [Provided that the Court shall not be empowered to take charge of the person of a proprietor disqualified on his own application under clause (e) of section 6.1

Court when bound to give up charge.

8. Whenever the circumstances of any ward become such that the Court could not take charge of him or of his property if he were not under its charge already, the Court shall be bound to release from its charge such person and his property.

Discretion of Court as to taking and keeping charge

- 9. The Court may in its discretion, in any case in which it is empowered by this Act to take charge of the person and property of any disqualified proprietor-
 - (a) take charge of such property without taking charge of such person:
 - (b) refrain from taking charge of any such person or property;
 - (c) at any time withdraw from such charge, if taken;
 - (d) at any time resume such charge, after having withdrawn from it.

[1] Clause (d) was added to s. 6 by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 3, in Vol. I of this Code.
[2] This word was substituted for the words "Local Government" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2, and Sch. Part 1I, see Vol. III of this Code.

[3] This proviso was added to s. 7 by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 4, in Vol. I of this Code.

[4] The clauses of s. 9 which were added by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 5 (printed in Vol. I of this Code) were repealed by the Bengal Court of Wards (Amendment) Act, 1906, (Ben. Act 1 of 1906), s. 2, post, p. 763, and are omitted.

(Secs. 10-10A.)

8 of 1890.

10. [1] [Whenever a Civil Court is satisfied that an order should be Application made under section 7 of the Guardians and Wards Act, 1890, [2] Court to appointing a guardian of the person or property of a minor, or both; Court of whenever a Civil Court removes, under section 39 of the same take Act, [2] the guardian of a minor,]

or whenever a person has been adjudged, under Act 35 of 1858,[3] to be of unsound mind and incapable of managing his affairs,

if the property of such minor or disqualified proprietor consists, in whole or in part, of land or any interest in land, the Civil Court may apply to the Court of Wards to take charge of the person and property of such minor or disqualified proprietor; and it shall be at the discretion of the Court of Wards to take charge of such person or property, or to refuse to do so.

Nothing contained in sections 12 to 19 (both inclusive) of Act 35 of 1858[3] shall be held to apply to persons or properties under the charge of the Court of Wards.

- [4] 10A. (1) Whenever the Court of Wards assumes charge of any Notice to person or property under section 7 or section 10, it shall publish, in creditors. the manner provided in section 64A, a notice calling upon all creditors having claims against the ward or his immovable property to submit the same in writing to the Court, at a place to be named in the notice, within six months from the date of the publication of the notice aforesaid.
- (2) Every such claim (other than a claim on the part of the Government) not submitted to the Court in compliance with the provisions of sub-section (1), shall, save in the case provided for by section 10E, sub-section (2), clause (c), notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of the period aforesaid:

Provided that, if the Court is satisfied that the creditor was prevented by any sufficient cause from complying with the provisions of sub-section (1), it may consider and allow, either wholly or in part, his claim for interest at any time after the date of the expiry of the period aforesaid.

1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.

[4] Ss. 10A to 10E were inserted by the Bengal Court of Wards (Amendment) Act,

1906 (Ben. Act 1 of 1906), s. 3, post, p. 763.

^[1] The clauses in square brackets in s. 10 were substituted for the original clauses by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 6, in Vol. I of this Code.

[2] Printed in the General Acts, 1887-97, Ed. 1928, p. 87.

^[3] Act 35 of 1858 has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), printed in General Acts, 1910-13, Ed. 1928, p. 245 and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1907 (10 of 1907) a 8 in General Acts, 1887-97 Ed 1928 p. 354

(Secs. 10B-10D.)

Creditors to furnish full particulars and documents.

- [1]10B. (1) Every creditor submitting his claim in compliance with the provisions of section 10A, sub-section (1), shall furnish, along with his written statement of claim, full particulars thereof; and shall, within such time as the Court may appoint, produce all documents which are in his possession, power or control (including entries in books of account) on which he relies to support his claim, together with a true copy of every such document.
- (2) The Court shall, after marking, for the purpose of indentification, every original document so produced, and verifying the correctness of the copy, retain the copy and return the original to the creditor.
- (3) If any document, which to the knowledge of the creditor is in his possession, power or control, is not produced by him as required by sub-section (1), the document shall not be admissible in evidence against the ward, whether during the continuance of the management or afterwards, in any suit brought by the creditor or by any person claiming under him in respect of such claim.

Stay of pro-

[1] 10C. If a Civil Court has directed any process of execution to ceedings of issue against any immovable property of a ward, or the rents thereof, Civil Courts. or any crops standing thereon, the Court of Wards may, at any time within one year after it assumed charge of such property, apply to the Civil Court to stay proceedings in the matter of such process; and the Civil Court may, on such terms regarding interest or compensation for delay as may appear to it to be just and reasonable, stay such proceedings for such period as it may deem fit.

Adjudication of claims.

- [1] 10D. (1) On receipt of all claims submitted in compliance with the provisions of sections 10A and 10B, the Court shall proceed to investigate such claims, and shall decide which of them are to be wholly or partly admitted or wholly or partly rejected, as the case may be, and shall communicate its decision in writing to each claimant concerned.
- (2) When the Court has admitted any claim under sub-section (1), it may make to the creditor a proposal in writing for the reduction of the claim, or of the rate of interest to be paid in future, or of both; and, if such proposal, or any modification of it, is accepted by the creditor and his acceptance is finally recorded and attested by the Court, it shall be conclusively binding upon the creditor and upon the ward:

Provided that if, when the superintendence of the property by the Court is relinquished or otherwise terminates, any portion of the claim reduced as aforesaid is still unsatisfied, the creditor shall be entitled

(Secs. 10E-11.)

to recover a sum bearing the same proportion to the original claim admitted under sub-section (1) as the unsatisfied portion bears to the reduced claim.

(3) Subject to the provisions of sub-section (2), nothing in this section shall be construed to bar the institution of a suit in a Civil Court for the recovery of a claim against a ward or his property which has been submitted to the Court of Wards:

Provided that no decision of the Court of Wards under this section shall be proved in any such suit as against the defendant.

- (4) In calculating the period of limitation applicable to suits for the recovery of a claim which has been submitted to the Court of Wards, the period from the date of submission of the claim up to the date of the communication of the Court's decision thereon to the creditor shall be excluded.
- [1] 10E. (1) The Court of Wards may, after making an investigation Relinquishunder section 10D, when it appears to the Court that the estate is involv- ment of ed beyond all hope of extrication, or for any other sufficient reason, by inextricably involved notice published in the manner provided in section 64A, declare that estates. it will, on a date to be fixed by the notice, relinquish charge of the property and person (or of the property, as the case may be) of the ward under this section.

- (2) On the date so fixed,—
 - (a) such charge shall terminate;
 - (b) the owner of the said property shall be restored to the possession thereof, subject to any contracts entered into by the Court of Wards for the preservation or benefit of such property; and
 - (c) the claims for interest barred under section 10A, sub-section (2), shall revive in case the debt or liability in respect of which the interest is claimed be not then barred by any law of limitation.
- (3) In calculating the periods of limitation applicable to suits to recover claims for interest revived under this section, the time during which such charge has continued shall be excluded.
- [2]11. Whenever one or more of the joint proprietors of whose Procedure properties the Court has taken charge ceases to be subject to the juris- when any of diction of the Court, the Court may retain charge of the persons and joint proproperties of the still disqualified proprietors during the continuance of ceases to be their disqualification.

disqualified.

^[1] See footnote [4] on p. 283 ante.
[2] This section was substituted for the original s. 11 by the Court of Wards Act. (Bengal) Amendment Act, 1892 (4 of 1892), s. 7, in Vol. I of this Code.

(Secs. 12-13A.)

And, in case any person entitled to any property jointly with any disqualified proprietor shall consent thereto, the Court may retain or resume the charge of the property of such proprietor or any part thereof so long as the property of any such disqualified proprietor as aforesaid remains in charge of the Court.

Withdrawal from charge by Court.

12. The Court of Wards may at any time withdraw from the charge of any person and property taken under section 10 or under section 11, and from the charge of any person or property[1][which either before or after the commencement of this Act was or is placed] under the charge of the Collector by a Civil Court under section 12, section 14 or section 21 of Act 40 of $1858,\lceil^2\rceil$ or under section 11 of Act 35 of $1858\lceil^3\rceil$ [or under any other enactment for the time being in force][4]:

Provided that it shall give notice of its intention to withdraw to the Civil Court concerned, and that such notice shall be given not less than two months before the Court of Wards shall so withdraw.

Procedure when succession to property of ward disputed.

13. Whenever, on the death of any ward, the succession to his property or any part thereof is in dispute, the Court may either direct that such property or part thereof be made over to any person claiming such property, or may retain charge of the same until the right to possession of the claimant has been determined under Bengal Act 7 of 1876, [5] or until the dispute has been determined by a competent Civil Court.

Power of Court to retain charge of property ef disqualified proprietor until discharge of debts.

[6] 13A. If, when any disqualified proprietor dies, or ceases to be disqualified within the meaning of this Act, there remain undischarged any debts or liabilities which were incurred by, or are due from, such proprietor, or which are a charge upon his property or any part thereof,

then, notwithstanding anything contained in the foregoing sections, the Court may either withdraw from the charge of such property or retain such charge until such debts and liabilities, as the Court considers necessary to be discharged, together with all interest due thereon, have been discharged:

Provided that, after the death of a proprietor, the Court shall not retain charge on account of any debt or liability which has been declared by a competent Civil Court not to be binding on his representative.

|z| Act 40 of 1806 was repealed by the Guardians and Wards Act, 1890 (8 of 1890), printed in General Acts, 1887-97, Ed. 1928, p. 87.

[3] The Lunacy (District Courts) Act, 1858. It has been repealed by the Indian Lunacy Act, 1912 (4 of 1912), printed in General Acts 1910-13, Ed. 1928, p. 245.

[4] The words in square brackets were added by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 8, in Vol. I of this Code.

[5] The Bengal Land Registration Act, 1876. It is printed, ante, p. 237.

[6] S. 13A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben Act, 1 of 1906) s. 4 printed matter p. 763 (Ben. Act 1 of 1906), s. 4, printed, post, p. 763.

^[1] The words in square brackets were substituted for the words "which before the commencement of this Act was placed" by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 8, in Vol. I of this Code.

[2] Act 40 of 1858 was repealed by the Guardians and Wards Act, 1890 (8 of 1890),

(Secs. 14-18.)

14. Subject to the provisions of this Act, the Court-

General

- (a) may, through its manager, do all such things requisite for powers of the proper care and management of any property of which it may take or retain charge under this Act, or which may be placed under its charge by order of a competent Civil Court, as the proprietor of any such property, if not disqualified, might do for its care and management, and
- (b) may, in respect of the person of any ward, do all such things as might be lawfully done by the legal guardian of such ward.
- 15. The Court may exercise all or any powers conferred on it by this Exercise Act through the Commissioners of the Divisions and the Collectors of through others of the districts in which any part of the property of the disqualified pro-powers prietor may be situated, or through any other person whom it may conferred on Court. appoint for such purpose.

- * * * * from time to time delegate Delegation [1]* The Court may, any of its powers to such Commissioners or Collectors or other person as of powers. aforesaid, and may at any time[2] * * revoke such delegation.
- [3]16. The Court may from time to time order such establishments Establishto be entertained and expenses to be incurred as it shall consider requisite ments and expenses. for the care and management of the persons and properties under its charge, for superintendence, for the audit of accounts, and generally for all purposes of this Act; and may order that such expenses, inclusive of all the salaries, gratuities and payments on account of the leaveallowances of such establishments, be charged against any one or more properties for the purposes of which such establishments are, or have been, entertained or such expenses have been incurred.

- 17.(General contribution for general purposes.) Rep. by the Government Management of Private Estates Act, 1892 (10 of 1892), s. 9.
- 18. The Court may sanction the giving of leases or farms of the Power to whole or part of any property under its charge, and may direct the manage mortgage or sale of any part of such property, and may direct the doing

Sch. Pt. II,—see Vol. III of this Code.

[2] The words "with the like sanction," were omitted by ibid.

[3] This section was substituted for the original s. 16 by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 3, post, p. 451. The original section

"16. The Court may from time to time order such establishments to be entertained and expenses to be incurred, as it shall consider requisite for the care and management of the persons and properties under its charge, for superintendence, for the audit of accounts, and generally for all purposes of this Act, and may order that the cost of any such establishment and any such expenses be abased arginate any order.

charged against any one or more properties for the purposes of which they are entertained or incurred."

^[1] The words "with the sanction of the Lieutenant-Governor," were omitted by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and

(Secs. 19-23.)

of all such other acts as it may judge to be most for the benefit of the property and the advantage of the ward.

When Court may order property to be formed into separate estate. 19. If the Court thinks it expedient to direct the sale or mortgage of any part of an estate of which the ward is the sole proprietor, it may order the Collector to partition off such part into a separate estate; and the demand of land-revenue and of the cesses for which the original estate was liable shall be assessed upon and divided between the two separate estates so formed, respectively, in such manner as the Court, with the sanction of the Lieutenant-Governor, may direct.

Appointment of managers and guardians.

20. The Court may appoint one or more managers for the property of any ward, and one or more guardians for the care of the person of any ward under the charge of the Court and may control and remove any manager or guardian so appointed.

On any disqualified proprietor becoming a ward, the Court may, at its discretion, confirm or refuse to recognize any appointment of a person to be guardian of such disqualified proprietor which may have been made by a will.

Custody, education and residence of wards. 21. The Court may make such orders as to it may seem fit in respect of the custody, education and residence of a minor ward, and such minor members of the ward's family as are under its charge, and in respect of the custody and residence of any ward, not being a minor, whose person is under the charge of the Court.

Allowance for ward and his family.

22. The Court shall allow, for the support of each ward and of his family, such monthly sum as it thinks fit (if any) with regard to the rank and circumstances of the parties.

PART III.

PROTECTION FROM SALE OF CERTAIN ESTATES.

Estate under charge of Court exempt from sale,

[1]23. Clause 1.—Except as hereinafter provided by section 23A, every estate, and, subject to the provisions of section 14 of Act 11 of 1859,[2] every share or part of an estate for which a separate account has been opened under section 10 or section 11 of the said Act, or under section 70 of Bengal Act 7 of 1876,[3] shall be exempt from sale for

^[1] Ss. 23 and 23A were substituted for the original s. 23 by the Bengal Court of Wards (Amendment) Act, 1881, (Ben. Act 3 of 1881), s. 4, post, p. 451. The original section ran thus:—

[&]quot;23. Every estate, and, subject to the provisions of s. 14 of Act 11 of 1859, every part or share of an estate for which a separate account has been opened under s. 10 or s. 11 of the said Act, or under s. 70 of Bengal Act 7 of 1876, shall whilst it is under the charge of the Court, be exempt from sale for arrears of revenue:

[&]quot;Provided that all arrears of revenue shall be the first charge upon the proceeds of any such estate, part, or share, sold for any other cause than for arrears of revenue while under such charge."

^[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code. [3] The Land Registration Act, 1876. It is printed, ante, p. 237.

(Secs. 23A-24.)

arrears of Government revenue which accrued whilst such estate, share or part has been under the charge of the Court:

Provided that all such arrears of revenue shall be the first charge upon the sale-proceeds of any estate, share or part which may be sold for any other cause than for such arrears of revenue.

Clause 2.—If at the time when such estate, share or part ceases to Recovery of be under the charge of the Court of Wards, an arrear of revenue is due arrears of on account thereof, the Collector may attach such estate, share or part due at time and collect the rent, cesses and other demands due, and all arrears when estate thereof, managing such estate, share or part either directly or through under charge a manager, or by farming it for a period not exceeding five years, as he of Court. may think fit:

Provided that, when such estate, share or part has been attached under the provisions of this clause, the proceeds shall be paid to the Collector; and the Collector, after deducting the claims of Government for revenue and other public demands, together with any interest which has accrued upon such public demands other than Government revenue, and the charges of management due up to the date of making such deduction, shall release such estate, share or part from attachment, and pay any balance of the proceeds still remaining in his hands to the proprietor of such estate, share or part or to his duly constituted agent, and shall furnish such proprietor or agent with an account of the receipts and expenditure extending over the time when such estate, share or part was under attachment.

[1]23A. Notwithstanding anything, in clause 5, section 8, Conditions Regulation 1 of 1793,[2] or in section 23 of this Act, contained, any under which estate, share or part of an estate on which an arrear revenue has accrued while under the charge of the Court, may at any arrear of revenue time be sold under the provisions of the law[3] for the time being in accrued force for the recovery of arrears of Government revenue, if the Court under has certified in writing that the interests of the ward require that such estate, share or part be so sold, and has stated in such writing the reasons upon which it has arrived at such conclusion.

estate may

24. No estate the sole property of a minor or of two or more minors, Restriction and descended to him or them by the regular course of inheritance, or on sale for by virtue of the will of, or some settlement made by, some deceased arrears of revenue of owner thereof, shall be sold for arrears of revenue accruing subsequently estate to his or their succession to the same, until such minor or one of such belonging to minor. minors has completed his age of twenty-one years; but all arrears of

^[1] See footnote [1], ante, p. 288.
[2] The Bengal Permanent Settlement Regulation, 1793. It is printed in Vol. I of this Code.

^[8] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

⁶ L. D.

(Secs. 25-29.)

revenue shall be the first charge upon the proceeds of such estate if the estate is sold for any other cause during such minority.

Power of Collector to attach such estate.

The Collector may, on an arrear so accruing on any such estate, attach the estate and collect the rents and all arrears of rent due, managing the estate either directly or through a manager or by farming it, as he may think fit, for a period not exceeding ten years nor extending beyond the time when such minor or one of such minors completes his age of twenty-one years.

Section 24 unless notice given.

25. The exemption from sale for arrears of revenue given by section not to apply 24 shall only apply to cases in which a written notice of the fact that the estate is the sole property of one or more minors, and entitled to such exemption, has been served on the Collector before the sale.

Application of proceeds of estate farmed under section 24.

26. When an estate has been farmed under the provisions of section 24, the proceeds of such farm shall be paid to the Collector; and the Collector, after deducting the amount of the claims of Government for revenue and other public demands, and the charges of management, shall either pay the proceeds to the person authorized to receive them for the proprietor, or shall dispose of them in any of the modes mentioned in section 49 or in section 50.

PART IV.

ASCERTAINMENT OF DISQUALIFICATION.

Procedure for ascertaining and declaring disqualification.

27. Whenever any Collector has reason to believe that any person residing in his district, or being the proprietor of an estate borne on the revenue-roll of his district, should be declared or adjudged to be a disqualified proprietor under section 6, he shall make such inquiry as he may deem necessary; and, if satisfied that such person should be so declared or adjudged, shall make a report of the same to the Court;

and the Court shall, on receipt of such report, make such order consistent with this Act as may seem to it expedient.

Power to enforce provisions of report.

28. Nothing in section 27 shall prevent the Court or the Local Government from putting the provisions of this Act in force without Act without any report from the Collector.

Powers of Collector as to preservation of property on death of a proprietor whose heirs should be

declared disqualified.

29. Whenever any Collector receives information that the sole proprietor of an estate which is borne on the revenue-roll of his district has died.

or that the sole proprietor of any estate has died within his district, and such Collector has reason to believe that the heirs of such proprietor should be declared or adjudged to be disqualified under section 6, he may take such steps and make such orders for the safety and preservation of the moveable property of such heirs, and of all deeds, documents or papers relating to the property of such heirs, as to him may seem fit.

(Secs. 30-32.)

Such Collector may call upon any other Collector in whose jurisdiction any such moveable property, or any such deeds, documents or papers may be, to take charge of the same; and thereupon such other Collector shall have the same powers with respect to such property, deeds, documents and papers within his district as are conferred by this section on the first mentioned Collector.

If the property is not afterwards taken under the charge of the Recovery Court, all expenses incurred by a Collector acting under this section of expenses if property shall be recoverable as arrears of revenue from the owner of such pro- is not taken perty or the person or persons whom the Collector shall find to be in under charge possession of such property, and shall constitute a demand under Bengal Act 7 of $1868,\lceil 1 \rceil$ or any similar law $\lceil 2 \rceil$ for the time being in force.

30. A Collector acting under the last preceding section may direct Production that any person who has the custody of a minor heir of any such deceased of minor proprietor, and proprietor shall produce such minor before such Collector or before any order for his other Collector on a day fixed; and the Collector before whom the minor temporary is so produced may make such order for the temporary custody and custody. protection of such minor as to him may seem fit.

If the minor is a female, she shall not be brought into the presence of the Collector, but the Collector may take such steps for her identification as he may think fit.

31. If a sole proprietor of an estate, who does not reside within Application the local limits of the ordinary original civil jurisdiction of the High to Civil Court, is reported by a Collector to be of unsound mind and incapable of lunatics of managing his affairs, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply, in pursuance of the provisions of Act 35 of 1858, [8] to the Civil Court of the district within the jurisdiction of which such proprietor may reside.

32. If a sole proprietor of an estate, who does not reside within the Application local limits of the ordinary original civil jurisdiction of the High Court, to Civil to is reported by a Collector to be incapable of managing his property on make the ground of some physical defect or infirmity other than unsoundness inquiry of mind, the Court may order the Collector making such report, or disqualisuch other Collector as the Court may appoint, to apply to the principal fication on Civil Court of the district within which such person may be residing; physical and, upon such Collector so applying, such Civil Court shall inquire into defect or infirmity. and determine the question as to the alleged incapacity.

^[1] The Bengal Land-revenue Sales Act, 1868. It is printed, ante, p. 91.
[2] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.
[3] Act 35 of 1858 has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), printed in General Acts, 1910-13, Ed. 1928, p. 245, and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.

(Secs. 33-34A.)

Similar application when proprietor resides within original jurisdiction of High Court or beyond Bengal.

33. If a sole proprietor of an estate, who is resident within the local limits of the ordinary original civil jurisdiction of the High Court of Judicature at Fort William in Bengal, or resident beyond the territories administered by the Lieutenant-Governor of Bengal, [1] shall be reported by a Collector to be incapable of managing his property by reason of some physical defect or infirmity other than unsoundness of mind, the Court may order the Collector making such report, or such other Collector as the Court may appoint, to apply to the principal Civil Court of the 24-Parganas, or to such other Civil Court as the Lieutenant-Governor, on application made to him by the Collector in that behalf, may determine.

Such Civil Court shall thereupon inquire into and determine the question as to the alleged incapacity.

Powers and duties of Courts when inquiry is instituted under section 32 or 33.

34. When any inquiry is instituted by a Civil Court under section 32 or section 33, such Court shall, for the purposes of making such inquiry, have the powers conferred, and proceed in the manner prescribed, by Act 35 of 1858[2] with respect to the inquiries directed to be made by the said Act.

The Civil Court shall transmit to the Court of Wards a copy of the order made on each such inquiry; and the Court of Wards shall thereupon, in case the proprietor has been found by the Civil Court to be incapable as aforesaid, make such order, consistent with this Act, as it shall think fit.

The Civil Court shall have, with reference to proprietors who have been adjudged to be incapable as aforesaid, the same powers as are conferred on a Civil Court by section 21 of Act 35 of 1858,[3] with reference to persons adjudged to be of unsound mind and incapable of managing their affairs.

Recovery of expenses incurred by Collector under sections 31 to **33.**

[4] 34A. All expenses incurred by a Collector in taking action under section 31, section 32 or section 33 in respect of any person shall, if the property of such person is not taken under the charge of the Court, be recoverable from such person or from the person whom the Collector finds to be in possession of such property, under the procedure provided by the Public Demands Recovery Act, 1895,[5] for the recovery of public Ben. Act 1 demands.

of 1895.

^[1] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[2] Act 35 of 1858 has been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.

^[3] This reference should now be construed as a reference to s. 82 of the Indian

Lunacy Act, 1912 (4 of 1912), in General Acts, 1910-13, Ed. 1928, p. 245.
[4] S. 34A was inserted by the Bengal Court of Wards (Amendment) Act, 1906

⁽Ben. Act 1 of 1906), s. 5, post, p. 763.

[5] Bengal Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 1 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 1 of 1914), and the Public Demands Recovery Act 1914 (B. and O. Act 2 of 1914), and the Public Demands Recovery Act 2 of 1914 (B. and O. Act 2 of 1914), and the Public Demands Recovery Act 2 of 1914 (B. and O. Act 2 of 1914), and the Public Demands Recovery Act 2 of 1914 (B. and O. Act 2 of 1914), and the Public Demands Recovery Act 2 of 1914 (B. and O. Act 2 of 1914), and the Public Demands Recovery Act 2 of 1914 (B. and O. Act 2 of 1914), and the Public Demands Recovery Act 2 of 1914 (B. and O. Act 2 of 1914), and the Public Demands Recovery Act 2 of 1914 (B. an Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, Vol. III of this Code.

(Secs. 35-39.)

PART V.

Procedure after Ascertainment of Disqualification.

35. Whenever the Court has determined to take the person or Order property of a disqualified proprietor under its charge, whether in declaring person or accordance with an order of the Civil Court or otherwise, the Court shall property to be under make an order declaring the fact and directing that possession be taken charge of of such person and property or of such property on behalf of the Court; Court. and the Court shall be held to be in charge of such property from the time when possession shall have been so taken.

36. As soon as conveniently may be after an order is made under Collector to take the provisions of section 35, the Collector of every district within which possession of any part of the ward's property may be situated, or some person autho- movable rized in writing by him in that behalf, shall take possession of all property. accounts, papers and movable property of the ward, and place under proper custody such portion thereof as he may think necessary.

Any such Collector, or some person authorized as aforesaid, may, in case he has reason to believe that any such account, paper or property is in any room, box or receptacle within any house in the actual possession of the ward, break open the same for the purpose of searching for such account, paper or property.

37. Any such Collector may also order all persons in the employ of Additional the ward, or all persons who were in the employ of the deceased proprie- Collector. tor from whom the ward has derived his property, to attend before him:

and may order any person to deliver up any accounts, papers or moveable property belonging to the ward, or any accounts or papers relating to the ward's property, which the Collector has reason to believe are in such person's possession,

and may order all holders of tenures and under-tenures on such property to produce their titles to such tenures and under-tenures.

PART VI.

MANAGEMENT AND GHARDIANSHIP.

- 38. If no manager of the property of a ward is appointed by the Collector Court, the Collector of the district in which the greater part of such when to be property is situated, or any other Collector when the Court property is situated, or any other Collector whom the Court may appoint manager. in that behalf, shall be competent to do, under the orders of the Court, anything that might be lawfully done by the manager of such property.
- 39. Every manager appointed by the Court shall have power to Powers of manage all property which may be committed to his charge, to collect manager.

(Secs. 40-43.)

the rents of the land entrusted to him, as well as all other money due to the ward, and to grant receipts therefor;

and may, under the orders of the Court, grant or renew such leases and farms as may be necessary for the good management of the property.[1]

General duties of manager.

Specific duties of

manager.

40. Every manager shall manage the property committed to him diligently and faithfully for the benefit of the proprietor, and shall, in every respect, act to the best of his judgment for the ward's interest as if the property were his own.

41. Every manager appointed by the Court shall—

- (a) have the care of so much of the property of the ward as the Court may direct:
- (b) give such security (if any) as the Court thinks fit, to the Collector, duly to account for all such property and for what he shall receive in respect of such property;
- (c) continue liable to account to the Court, after he has ceased to be manager, for his receipts and disbursements during the period of his management;
- (d) pass his accounts at such periods and in such forms as the Court may direct;
- (e) pay the balance due from him thereon;
- (f) apply for the sanction of the Court to any act which may involve the property in expense not previously sanctioned by such Court;
- (g) sign all papers, deeds, documents and writings which may be executed by him by virtue of his office;
- (h) be entitled to such allowance, to be paid out of the property, as the Court may think fit, for his care and pains in the execution of his duties:
- (i) be responsible for any loss occasioned to the property by this wilful default or gross negligence.

General duties of guardian.

42. A guardian appointed to the care of a ward shall be charged with the custody of the ward, and must look to his maintenance, health, and, if he be a minor, to his education.

Specific duties of guardian.

- 43. Every guardian appointed by the Court shall—
 - (a) give such security (if any) as the Court thinks fit, to the Collector for the due performance of his duty;
 - (b) pass his accounts at such periods and in such form as the Court may direct;
 - (c) pay the balance due from him thereon;

^[1] As to the grant by the Court of Wards of leases of ghatwali lands, see the Bengal Ghatwali Lands Act, 1859 (5 of 1859), in Vol. I of this Code.

As to the right of manager, appointed by the Court of Wards, to vote for the adoption of a scheme for the reclamation or improvement of lands under the Bengal Drainage Act, 1880 (Ben. Act 6 of 1880), see s. 16 (2) of that Act, post, p. 341.

(Secs. 44-48.)

- (d) continue liable to account to the Court, after he has ceased to be guardian, for his receipts and disbursements during the period of his guardianship;
- (e) apply for the sanction of the Court to any act which may involve expense not previously sanctioned by the Court;
- (f) be entitled to such allowance, to be paid out of the property of the ward, as the Court may think fit, for his care and pains in the execution of the duties.
- 44. No person who would be the next legal heir of a ward, or would Exclusion of otherwise be immediately interested in outliving a ward, shall be ap-certain interpointed to be his guardian;

but nothing in this section shall apply to the mother of a ward or ianship.

to a testamentary guardian.

45. If the ward is a female, a female of the same religion shall, Who to be except in the case of a testamentary guardian, be appointed guardian, guardian of female ward. preference being given to female relatives if any such be eligible.

But no guardian shall ordinarily be appointed or continued for a female ward if she has an adult husband.

46. Every sum due to the Court from a manager or guardian or Recovery of from the sureties of a manager or guardian, or from any officer or servant sums due to the Court. employed under the Court, or from the sureties of any such officer or servant, shall be recoverable as a demand under Bengal Act 7 of 1868[1] or any similar law[2] for the time being in force.

ested persons

47. The Court may order any past or present manager or guardian, Court may or past or present officer subordinate to a manager or guardian, to deliver order guardian or up his accounts or any property which may be in his possession within manager to such time as may be fixed by the Court.

[3]48. All moneys received by the manager shall be applied to the Application purposes hereinafter mentioned, in accordance with such instructions as of moneys the Court may from time to time give in that behalf.

make over received by manager.

Unless the Board of Revenue shall specially otherwise direct, priority shall be given to the purposes included under Class I over those included in Class II, and priority shall be given to the purposes included in Class II over those included in Class III.

CLASS I.

The payment of all charges necessary for the maintenance, education and religious observances of the ward and his family,

for the management and supervision of the property of the ward, and the discharge of the instalments of Government revenue and of

^[1] The Bengal Land-revenue Sales Act, 1868. It is printed, ante, p. 91.
[2] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

^[3] This section was substituted for the original s. 48 by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 5, post, p. 451.

(Sec. 49.)

all cesses and other public demands from time to time due in respect of such property or any part of such property.

CLASS II.

The payment of all rents, cesses and other demands due to any superior landlords in respect of any land held on behalf of the ward,

the liquidation of debts payable by the ward,

the payment of all expenses which may be necessary to protect the interests of the ward in the Civil Courts or otherwise,

the maintenance in an efficient condition of the estates, buildings and other immovable property belonging to the ward, and

the payment of such religious, charitable and other allowances as were paid out of the proceeds of the property before it came under the charge of the Court, and such allowances and donations befitting the position of the ward's family as the Court may authorize to be paid.

CLASS III.

The improvement of the land and property of the ward and the benefit of the ward and his property generally:

Disposal of surplus moneys. [2]49. If the ward is a female of sound mind, who has completed her age of twenty-one years, or a male who has completed his age of twenty-one years whose property [3][is under the charge of the Court under clause (e) of section 6, or under the second clause of section 11], no part of the surplus mentioned in the proviso[4] to the section immediately preceding shall be expended by the Court otherwise than in the liquidation of debts or in the improvement of the lands or property as aforesaid.

Any portion of such surplus remaining, after provision has been made for such purposes, shall be paid to such ward:

Provided that, before paying any portion of such surplus to such ward, the Court may deduct therefrom and retain at its disposal any sums which it may consider necessary to retain—

(1) as a working balance for the management of the property and expenses incidental thereto;

^[1] The proviso was repealed by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 9, in Vol. I of this Code, and is omitted.

^[2] The section was substituted for the original s. 49 by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881) s. 5, post, p. 451.

^[8] The words in square brackets in s. 49 were substituted for the words "remains under the charge of the Court with his consent under s. 11" by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 10, in Vol. I of this Code.

^[4] The proviso ran thus:—
"Provided that the amount expended for such improvement and benefit in any one year shall not exceed ten per centum of the surplus which the accounts of the previous year may show to have been available after paying or making provision for the payment of all expenses incurred up to the end of such previous year, unless, in the opinion of the Court and of the Lieutenant-Governor, it is desirable for the protection or in the interests of the ward or his property to expend an amount exceeding such percentage."

(Secs. 50-51.)

- (2) in order to make provision for any special charges which are expected to become payable on account of the property, and which probably cannot be met from the expected surplus of the following years.
- 50. If the ward is not a female or [1] [male] as aforesaid, and Power to if any surplus remains after providing, so far as the Court may think surplus. fit, for the objects mentioned in [2] [section 48], the same shall be applied in the purchase of other landed property, or invested at interest on the security of-

promissory notes, debentures, stock and other securities of the Government of India or of the United Kingdom of Great Britain and Ireland;

bonds, debentures and annuities charged by the Imperial Parliament on the revenues of India:

stock or debentures of or shares in railway or other companies, the interest whereon has been guaranteed by the Secretary of State for India in Council:

debentures or other securities for money paid by or on behalf of any municipal body under the authority of any Act of a legislature established in British India; or

such other securities, stocks or shares, guaranteed by the Government of India or the Government of Bengal, as to the Court shall seem fit; $\lceil 3 \rceil \lceil \text{or},$

mortgages on immovable property].

PART VII.

SUITS.

51. In every suit brought by or against any ward he shall be therein Manager or described as a ward of Court; and the manager of such ward's property, Collector to be next or, if there is no manager, the Collector of the district in which the friend or greater part of such property is situated, or any other Collector whom guardian in the Court of Wards may appoint in that behalf, shall be named as next against friend or guardian for the suit, and shall in such suit represent such ward; ward. and no other person shall be ordered to sue or be sued as next friend or be named as guardian for the suit by any Civil Court in which such suit may be pending.

^[1] The word "male", in s. 50, was substituted for the word "person" by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 6, post,

^[2] The word and figures "section 48", in s. 50, were substituted for the word and figures "section 49" by ibid.

^[3] The words in square brackets were added by the Bengal Court of Wards (Amendment) Act, 1909 (Ben. Act 2 of 1909), s. 2, post, p. 917.

(Secs. 52-58.)

Power of Court of Wards to nominate another person to be next friend or guardian for suit.

52. The Court of Wards may, by an order, nominate or substitute any other person to be next friend or guardian for any such suit; and, upon receiving a copy of any such order of substitution, the Civil Court in which such suit is pending shall substitute the name of the next friend or guardian for the suit so appointed for the name of the manager or Collector.

Payment of costs.

53. If in any such suit any Civil Court shall decree any costs against the next friend or guardian for the suit of the ward, the Court of Wards shall cause such costs to be paid out of any property of the ward which for the time being may be in its hands.

Service of process against wards.

54. Every process which may be issued out of any Civil Court against any ward shall be served, through the Collector, upon the next friend or guardian for the suit as aforesaid of such ward.

Suits not to be brought on behalf of wards unless

55. No suit shall be brought on behalf of any ward[1][by a manager], unless the same be authorized by some order of the Court:

Provided that a manager may authorize a plaint to be filed in order to prevent a suit from being barred by the law of limitation; but such by the Court suit shall not be afterwards proceeded with except under the sanction of of Wards. the Court. the Court:

Provided also that suits for arrears of rent may be brought on behalf of any ward if authorized by an order of the manager of the landed property on which such rents are due.

Saving of suits in High Court

56. Nothing contained in this Part shall apply to any suit instituted or pending in the High Court * * *[2].

PART VIII.

PENALTIES.

For disobeying certain orders of Collector.

57. Any person who refuses to comply with an order of a Collector under sections 29, 30, 36 or 37 shall be liable, by order of the Collector, to a fine not exceeding five hundred rupees.

For disobeving orders under section 47.

58. Any person who refuses to comply with an order made under section 47 may be punished, by order of the Court, with simple imprisonment and attachment of his property until the order is complied with:

^[1] The words "by a manager," in s. 55, were inserted by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 7, post, p. 451.

^[2] The words "or to a proprietor whose property is under the charge of the Court under clause (e) of s. 6 or under the second clause of s. 11," in s. 56, as amended by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 11, were repealed by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 6, post, p. 763, and are omitted.

(Secs. 58A-59.)

[1][Provided that the Collector may release any person who has been so imprisoned, on his furnishing sufficient security for his attendance and for the delivery of the accounts or property required within such time as the Collector shall think fit. The Collector may, at any time, rescind such order of release, and direct that effect shall be given to the previous order of imprisonment.

[2] 58A. Any farmer, holding or having held lands under the Court. Penalty on who, upon notice served upon him to that effect at any time during the lecting to currency of the lease or within six months after the expiry of the lease furnish under which such lands were held or after he has relinquished such accounts, lands, omits or refuses to furnish accounts or produce documents or papers required under such notice, and shall not show sufficient cause for such omission or refusal, shall be liable to such fine as the Collector may think fit to impose, not exceeding one hundred rupees, for such omission; and the Collector may impose such further daily fine as he may think proper, not exceeding twenty rupees for each day during which such farmer shall omit to furnish the accounts, documents or papers required after a date to be fixed by the Collector in a notice warning the farmer that such further daily fine will be imposed.

Such notice shall be served by tendering to the person to whom it may be directed a copy thereof, attested by the Collector, or by delivering such copy at the usual place of abode of such person or to some adult male member of his family; or, in case it cannot be so served, by posting some copy upon such conspicuous part of the usual or lastknown place of abode of such person; and, in case such notice cannot be served in any of the ways hereinbefore mentioned, it shall be served in such a way as the Collector issuing the notice may direct;

and the date fixed by such notice shall not be less than fifteen days after service thereof.

The Collector may proceed from time to time to levy any amount which has become due in respect of any fine imposed under this section, notwithstanding that an appeal against the order imposing such fine may be pending:

Provided that, whenever the amount levied under such order shall have exceeded five hundred rupees, the Collector shall report the case specially to the Commissioner of the Division, and no further levy in respect of such fine shall be made otherwise than by the authority of the said Commissioner.

59. Any person who disobeys any lawful order of the Court shall For disobey-ing order of be liable, on conviction before a Magistrate, to a fine not exceeding five Court.

^[1] This proviso was added to s. 58 by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 8, post, p. 452.

[2] Section 58A was inserted by ibid, s. 9.

(Secs. 59A-63.)

hundred rupees and, if he is a manager or guardian appointed by the Court, to a fine not exceeding one thousand rupees.

Persons employed by Court to be public servants."

[1]59A. Every person employed by the Court under this Act shall, 45 of 1860. for the purposes of the Indian Penal Code, be deemed to be a public servant.

PART IX.

MISCELLANEOUS.

Disabilities of wards.

60. No ward shall be competent to create, without the sanction of the Court, any charge upon, or interest in, his property or any part thereof, [2] [or to assign over or charge any allowance to be received by him from the Court].

Exemption of wards' property from execution proceedings in certain cases.

[3]60A. No property which is or has been under the charge of the Court shall be liable at any time, except with the leave of the Court, to be taken in execution of a decree made in respect of any contract entered into by the ward without the leave of the Court while his property was under such charge.

Certain persons to be deemed

[4]60B. For the purposes of Part VII and sections 60 and 60A, a person whose property is under the charge of the Court of Wards by to be wards. virtue of the second clause of section 11, or charge of whose property has been retained under section 13A, shall be deemed to be a "ward," but only so far as regards such property.

Adoption by ward invalid without consent of Lieutenant-Governor.

- 61. No adoption by any ward, and no written or verbal permission to adopt given by any ward, shall be valid without the consent of the Lieutenant-Governor, obtained either previously or subsequently to such adoption, or to the giving of such permission, on application made to him through the Court.
- **62.** (Sections 60 and 61 not to apply in certain cases.) Rep. by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 9.

Recovery of interest on arrears of rent.

[5]63. Any amount of interest which has accrued due, on arrears of rent or other demand recoverable as rent payable to the manager of an

^[1] Section 59A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 7, post, p. 764.

^[2] The words in square brackets were added to s. 60 by the Court of Wards Act (Bengal) Amendment Act, 1892 (4 of 1892), s. 12, in Vol. I of this Code.

^[3] Section 60A was inserted by ibid, s. 13.

^[4] Section 60B was inserted by the Bengal Court of Wards (Amendment) Act.

^{1906 (}Ben. Act 1 of 1906), s. 8, post, p. 764.
[5] S. 63 is to be read instead of the original s. 63 which was repealed by the Public Demands Recovery Act, 1880 (Ben. Act 7 of 1880), see s. 10 of the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), post, p. 452.

(Secs. 64-65A.)

estate which is in charge of the Court, may be recovered in any manner and by any process according to which such arrears may be recovered under any law for the time being in force; and any Court or officer who is competent to make an order or certificate in execution of which such arrears or other demand are recoverable may direct that any costs incurred by the manager in obtaining such order or certificate, and in executing the same, shall be recovered in the same manner and by the same process as if the amount thereof had been included in the said order or certificate.

64. When any penalty is imposed by any order under section 57 Record of or section 58, the Collector or Court passing such order shall make a penalty formal record of the same, with the reasons or grounds thereof.

reasons when imposed under section 57 or 58.

- [1]64A. Any notice required to be published by the provisions of Publication sub-section (1) of section 10A, or of sub-section (1) of section 10E, shall of notices. be published-
 - (a) in the English and in the vernacular Official Gazettes.
 - (b) in at least three issues each of one English and one vernacular newspaper published in Calcutta:
 - (c) in two issues of a newspaper (if any) published in the district or Division in which the ward ordinarily resides, or has last resided; and
 - (d) by posting such notice on the notice-boards in the offices of the Collector and of the Judge of the district in which the place named in the notice is situate.
- 65. Whenever the Court has determined to release the property of Procedure a ward from its charge, it shall make an order that the jurisdiction of when the Court over such property shall cease on a date not more than sixty jurisdiction and not less than fifteen days from the date of such order; and copies ceases. of such order shall be published as the Court may direct.
- [2]65A. Any expense incurred by the Court on account of any pro-Recovery of perty under its charge may, after the release of such property, be re-expenses covered as a demand, under Bengal Act 7 of 1880[8] or any other Act release of at the time being in force for the recovery of public demands, from property.

^[1] This s. 64A was inserted by the Bengal Court of Wards (Amendment) Act,

^[1] I has S. 54A was inserted by the Bengal Court of Wards (Amendment) Act, 1906 (Ben. Act 1 of 1906), s. 10, post, p. 764.

[2] Section 65A was inserted by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act 3 of 1881), s. 11, post, p. 452.

[3] Ben. Act 7 of 1880 was repealed by the Public Demands Recovery Act, 1895 (Ben. Act 1 of 1895), which again has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), printed in Vol. III of this Code.

(Secs. 66-70.)

any person into whose possession such property or any part thereof may have passed immediately after the release by the Court of such property:

Provided that the sum so recovered from any such person shall not be greater than the value of any such property which so passed into the possession of such person.

Judicial powers of Collector in making inquiries.
Appeals.

- **66.** A Collector making any inquiry under this Act may exercise 10 of 1877 any power conferred by the Code of Civil Procedure[1] on a Civil Court for the trial of suits.
- 67. An appeal shall lie from every order of a Collector under this Act to the Commissioner of the Division, and from every order of a Commissioner under this Act to the Court.

Control by Court.

68. All orders or proceedings of the Commissioner and of the Collector under this Act shall be subject to the supervision and control of the Court; and the Court may, if it thinks fit, revise, modify or reverse any such order or proceeding whether an appeal is presented against such order or proceeding or otherwise.

Control by Lieutenant-Governor.

69. In the exercise of the powers and in the discharge of the duties conferred and imposed respectively on the Court by this Act, the Court shall be guided by such orders and instructions as it may from time to time receive from the Lieutenant-Governor.

Power to Court to make rules.

- 70. The Court may make rules,[2] consistent with this Act,—
 - (a) defining the powers of Commissioners and Collectors respectively when the property of a ward is situated in two or more districts or in two or more Divisions;
 - (b) prescribing what reports shall be made from time to time by Collectors and Commissioners on the condition of the ward and his property;
 - (c) prescribing the periods at which and the mode in which accounts shall be submitted by managers and guardians respectively, and the mode in which such accounts shall be audited:
 - (d) regulating the custody of securities and title deeds belonging to the estate or property of a ward;
 - (e) regulating the procedure in appeals from orders of Collectors and Commissioners respectively under this Act;
 - (f) prescribing the procedure to be observed when a property ceases to be under the charge of the Court; and
 - (g) generally for the better fulfilment of the purposes of this Act.

The Court may from time to time alter, add to or repeal such rules.

[2] For rules made under s. 70, see the Bihar and Orissa Local Statutory Rules and

Orders, Vol. I, Pt. VI.

^[1] Act 10 of 1877 was repealed and re-enacted by Act 14 of 1882, which again has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

BENGAL ACT 5 OF 1880.

(THE BENGAL VACCINATION ACT, 1880.)

CONTENTS.

PRELIMINARY.

PREAMBLE.

SECTION.

1. Short title.

Extent.

Power to extend Act to towns and local areas.

Objection to such extension.

Procedure thereon.

Commencement. 2. Interpretation-clause.

VACCINATION OF CHILDREN.

3. Parent or guardian of children born in compulsory limits, and of unprotected children brought to reside in such limits or living in such limits at the date of this Act coming into force, must procure their vaccination.

Unprotected child may be required to be vaccinated within fifteen days. Public vaccinator bound to vaccinate all children brought to him.

4. Inspection.

Repetition of vaccination.

5. If child be unfit for vaccination, certificate in Form A to be given, which shall remain in force for three months (one month), but shall be renewable.

6. Provision for giving certificate of insusceptibility of successful vaccination. Procedure where child is found to have had small-pox or to be insusceptible of successful vaccination.

7. Provision for giving certificates of successful vaccination.8. No fee to be charged for vaccination at a public vaccine-station or for certificates. Proviso.

9. Fees how to be appropriated.
10. Superintendent of Vaccination or his assistants may inspect vaccination of child

VACCINATION OF UNPROTECTED PERSONS.

11. Unprotected persons to be vaccinated.

12. Former sections applicable.

13. Health Officer of Port may cause vaccination of unprotected persons on their arrival.

Health Officer may, in certain cases, require immediate vaccination of unprotected person on board.

Proviso.

MISCELLANEOUS.

13A. Occupier of house, etc., to allow access.

PROCEDURE APPLICABLE TO THE TOWN OF CALCUTTA ONLY.

14. Public vaccine-stations.

Appointment of public vaccinators, etc.

Notification of stations and hours of attendance.

304

SECTION.

- 15. Power of Corporation to make rules.
- 16. Superintendent of Vaccination.
- Assistant Superintendents.
- 17. Expenses of establishments to be a charge on the Corporation.

REGISTRATION.

- 18. Registrar of Births to give notice of requirement of vaccination.
- 19. Duplicates of all certificates to be transmitted to the Registrar.
- 20. Registrar to keep a vaccination notice and certificate book, 21. and also a duplicate register of births with entries concerning vaccination,
- 22. and also a register of postponed vaccinations.
- 23. Transmission of returns to Superintendent.
 24. Lieutenant-Governor may direct any person to perform duties of Registrar.

PROCEDURE APPLICABLE OUTSIDE THE TOWN OF CALCUTTA.

25. Powers of Corporation may be exercised in mufassal by Magistrate of the district and of Superintendent of Vaccination by Civil Surgeon

PROSECUTIONS AND OFFENCES.

- 26. Magistrate may make an order for the vaccination of any unprotected child under fourteen years. Penalty for disobedience of such order.
 - Proviso for costs to persons improperly summoned.
- 27. Penalty for not producing a child.
 28. Penalty for neglect to be vaccinated.
- Penalty for neglect to take child to be vaccinated, etc.
 29. Penalty for making or signing false certificate.
 29A. Penalty for obstructing public vaccinator or Inspector in the discharge of his duties.
- 29B. Vexatious entry by public vaccinator or Inspector.
 30. Prosecutions to be instituted by Lieutenant-Governor or Superintendent of Vaccination.
 - 31. Prosecution for neglect.

MISCELLANEOUS.

- 32. Annual return to be made of the number of children vaccinated, etc.
- 33. Lieutenant-Governor to make rules.

THE FIRST SCHEDULE.

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SCHEDULE A.

SCHEDULE B.

SCHEDULE C.

SCHEDULE D.

SCHEDULE E. SCHEDULE F.

BENGAL ACT 5 OF 1880.

(THE BENGAL VACCINATION ACT, 1880)[1].

(26th May, 1880.)

An Act to make Vaccination Compulsory.

Whereas it is expedient to make vaccination compulsory in [2] [the Preamble. Town of Calcutta and the Port of Calcutta] and in other towns and selected local areas in the territories administered by the Lieutenant-Governor of Bengal[3] to which this Act may be hereafter extended; It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called the Bengal Vaccination Act, 1880: Short title.

It applies in the first instance only to[2] [the Town of Calcutta and Extent. the Port of Calcutta as hereinafter defined:

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1880, Pt. IV, p. 62; for Report of Select Committee, see ibid, p. 117; and for Proceedings in Council, see ibid, Supplement, pp. 270, 311, 405, 406.

LOCAL EXTENT.—This Act extends to the town and port of Calcutta, and any portion of it may be extended, by notification, to any other town or selected area in

Bengal Act 2 of 1911, which makes various textual amendments in the Act of 1880, nay be extended, by notification, to any town or selected area—see ss. 1 and 2 of the Act, post, p. 933.

The operation of each Act in any place may be suspended by notification—see the concluding paragraph of s. 1 of the Act of 1880, post, p. 306 and section 3 of the Act of 1911, post, p. 954.

For a list of places in the province of Bihar and Orissa to which the Act has been extended under s. 1, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VI.

The application of the Act is barred in—the Angel district by the Angel Laws Regulation 1913 (3 of 1913) as 3(a)

the Angul district, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3(2) in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3(2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

AMENDMENTS MADE BY THE LOCAL SELF-GOVERNMENT ACT.—Sections 92 to 95 of the

B. & O. Local Self-Government Act of 1885 (Ben. Act 3 of 1885) are to be read with, and taken as part of, Ben. Act 5 of 1880—see Ben. Act 3 of 1885, s. 96, post, p. 566. Sections 92 to 94 of the Act of 1885 impose duties and confer powers on District

Boards with respect to vaccination, and s. 95 empowers Commissioners of Divisions to make rules for the guidance of District Boards in the discharge of those functions.

It is provided by s. 93 of Act 3 of 1885 that Inspectors of Vaccination appointed

by a District Board shall exercise the powers and perform the duties assigned to the Superintendent of Vaccination under the Bengal Vaccination Act, 1880, and, by s. 94, that District Boards shall have the powers of the Magistrate of the district under s. 25 of the Act of 1880.

INOCULATION .- As to the prevention of inoculation for small-pox, see the Bengal

- Prevention of Inoculation Act, 1865 (Ben. Act 4 of 1865), ante, p. 39.

 [2] The words "the Town of Calcutta and the Port of Calcutta," in the preamble and in s. 1, were substituted for the words "the Town, Port and Suburbs of Calcutta" by the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), ss. 2 and 3, 11 spectively, post, p. 609, read with the Amending Act, 1903 (1 of 1903) in Vol. I of this
- [8] This includes the present province of Bihar and Orissa except the district of Sambalpur.

305

(Sec. 2.)

Power to extend Act to towns and local areas.

But the Lieutenant-Governor may, by notification published in the Calcutta Gazette, declare his intention to extend this Act, or any of its provisions, to any town or selected local area in the territories administered by him.

Objection to such extension.

Any inhabitant of such town or area objecting to such extension may, within six weeks from the said publication, send his objection in writing to the Secretary to the Government of Bengal, and the Lieutenant-Governor shall take such objection into consideration.

Procedure thereon.

When six weeks from the said publication have expired, the Lieutenant-Governor, if no such objections have been sent as aforesaid, or (where such objections have been so sent in) if in his opinion they are insufficient, may by like notification[1] effect the propose! extension.

The Lieutenant-Governor shall cause the substance of any notification mentioned in this section to be proclaimed and notified within the town or area affected by the same, in the vernacular of such town or area, by such means, and in such manner, as he may direct.

Commencement.

This Act shall come into force from the day[2] on which it may be published in the Calcutta Gazette with the assent of the Governor General; but its operation in any place may at any time be suspended by the Lieutenant-Governor by notification in the said Gazette.

Interpretationclause.

2. In this Act, unless there be something repugnant in the subject or context,-

"Town of Calcutta.

[8] [" Town of Calcutta" means Calcutta as defined by the Calcutta Ben. Act 2 of 1888. Municipal Consolidation Act, 1888][4];

Port of Calcutta."

"Port of Calcutta" means the Port of Calcutta subject to the jurisdiction of the Commissioners appointed under Bengal Act 5 of 1870, [5] [or any other law for the time being in force]:

^[1] For a list of notifications issued under this clause of section 1, see the B. & O.

Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] i.e., the 26th May, 1880—see Calcutta Gazette, 1880, Pt. III, p. 49

[8] This definition was substituted for the original definition by the Bengal Vacci nation (Amendment) Act, 1890 (Ben. Act 2 of 1890), s. 4(1), post, p. 609. The original definition ran thus:-

[&]quot;'Town of Calcutta' includes all places within the local limits of the ordinary

original jurisdiction of the High Court of Judicature at Fort William in Bengal."
[4] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), which again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act 3 of 1923), printed in the Supplement to the Bengal Code, 1913-15, p. 425.

^[5] The words in square brackets were added by the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), s. 4 (2), post, p. 609. Ben. Act 5 of 1870 has been repealed and re-enacted by the Calcutta Port Act, 1890 (Ben. Act 3 of 1890), printed in the Bengal Code, 1913-15, p. 1013

(Sec. 2.)

*[1]

- " parent" includes the father and mother of a legitimate child, and "Parent." the mother of an illegitimate child;
- "guardian" means any person to whom the care, nurture or "Guardian." custody of any child falls by law, or by natural right or recognized usage, or who has accepted or assumed the care, nurture or custody of any child, or to whom the care or custody of any child has been entrusted by any authority lawfully authorized in that behalf;
- "public vaccinator" means any vaccinator appointed under this "Public Vaccinator, vaccinat

[2]" Inspector" means a person "Inspecauthorized by the Superintendent of tor." Vaccination to exercise all or any of the functions of an Inspector under this Act;

" Medical " practitioner." [3] "medical practitioner" means any person duly qualified [5] by a diploma, degree or license to practise in medicine or surgery, [6] or specially licensed by the Lieutenant-Governor to practise vaccination and grant certificates under the provisions of this Act;

[3] "medical practitioner" [4]" medical practitioner" means "Medical means any person duly qualified[5] any person duly qualified[5] by a pracby a diploma, degree or license to diploma, degree of license to practise in medicine or surgery;

^[1] The definition of "Suburbs of Calcutta" was repealed by the Bengal Vaccination (Amendment) Act, 1890 (Ben. Act 2 of 1890), s. 4 (3), post, p. 609, and is omitted. It ran thus:—

[&]quot;'Suburbs of Calcutta' means the suburbs defined by the notification of the 10th September, 1877, and published in the Calcutta Gazette of the 26th September, 1877."

^[2] This definition of "Inspector" was inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 4, post, p. 934) and applies only in areas in which that Act is in force.

^[8] This clause is in force in this form in areas in which the Bengal Vaccina tion (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

The difference between the clauses lies in the words printed in italics.

^[4] This clause is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911), post, p. 933, is in force.

^[5] As to the meaning of the expression "duly qualified medical practitioner," see the B. & O. Medical Act, 1916 (B. & O. Act 2 of 1916), s. 30, in Vol. III of this Code

^[6] The words in italics were repealed by the Bengal Vaccination (Amendment) Act 1911 [Ben. Act 2 of 1911, s. 5 (I), post, p. 934], but remain in force in areas in which that Act is not in force.

(Sec. 3.)

"Unprotect-ed child."

[1]" unprotected child " means a child who has not been protected from small-pox by having had that disease[2] either naturally [2] or by inoculation, or by having been successfully vaccinated, and who successfully vaccinated, and who has not been certified under the provisions of this Act[8] to be insusceptible of vaccination;

[4] "unprotected child" means a "Unprotectchild who has not been protected ed child." from small-pox by having had that disease naturally or by having been has not been certified under the provisions of this Act[3] to be insusceptible of vaccination;

"Unprotected person."

[1] "unprotected person" includes a child who has no parent guardian. and means person who has not protected from small-pox by having protected from had that disease[2] either naturally[2] or by inoculation or by nated, and who has not been certi-Act[8] to be insusceptible of vaccination; vaccination:

in- "Unpro-[4]" unprotected person" cludes a child \mathbf{w} ho has no person." parent or guardian, and means a person who has not been small-pox having had that disease naturally or by having been successfully having been successfully vacci- vaccinated, and who has not been certified under the provisions of fied under the provisions of this this Act[3] to be insusceptible of

"Section."

"section" means a section of this Act[5].

VACCINATION OF CHILDREN.

Parent or guardian of children born in compulsory limits.

3. [1] The parent or guardian of every child born in any place to every child born in any place to provided, or may hereafter be provided, or may hereafter be extended, [6] shall, within one year extended, [6] shall, within [7] six

3. [4] The parent or guardian of which this Act applies as above[6] which this Act applies as above[6]

. . . .

^[1] These clauses are in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

The difference in the clauses lies in the words printed in italics.

^[2] The words in italics were repealed by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 5 (2), post, p. 933], but remain in force in areas in which that Act is not in force.

^[3] See s. 6, post, p. 312.

^[4] These clauses are in force ir this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

^[5] In reference to the amendments made by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), it is declared by s. 2 of that Act (post, p. 601) that "unless there is something repugnant in the subject or context, 'vessel' includes anything made for the conveyance by water of human beings or of property."

^[6] See s. 1, ante, p. 305.

^[7] The words "six months" were substituted for the words "one year" by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 6 (1) post, p. 934], for areas in which that section is in force.

(Sec. 3.)

after the birth of such child, and months after the birth of such child, and

the parent or guardian of every unprotected child under the age of and of fourteen years brought to reside, whether temporarily or permanently, unprotected in such place aforesaid,

in

[1]shall, within six months after [2]shall, within six months after to reside such such child's arrival in such place, place, $\lceil 3 \rceil$ or, if the child be at the time of its arrival less than one

children brought in such limits.

or living in such limits it the date of this Act coming into force,

[1][8]the parent or guardian of every unprotected child living in such place at the date of this Act coming into force therein, and whose age at such date exceeds one year but does not exceed fourteen years, shall, within six months from the said date.

year old, within one year and three months after its birth; and

such child's arrival

take it, or cause it to be taken, to a public vaccine-station to be must vaccinated, or shall, within such period as aforesaid, cause it to be procure vaccinated by some medical practitioner or public vaccinator;

their vaccination.

[4] and the parent or guardian of every unprotected child may, Unprowhenever the Superintendent of Vaccination, as hereinafter appointed, tected shall deem it expedient, be served with a notice, in the form prescribed in the first Schedule of this Act, requiring the parent or guardian, within required fifteen days after the service of the same, to take such child, or cause to be such child to be taken, to a public vaccine-station to be vaccinated, or within such period as aforesaid to cause it to be vaccinated by some ffteen medical practitioner or public vaccinator,

may be vaccinated within days.

^[1] These clauses are in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911), post, p. 933, is not in force.

^[2] This clause is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911), post, p. 933, is in force. The difference in the clauses lies in the words printed in italics.

^[8] The words in italics were repealed by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911), s. 6 (2), post, p. 934, but remain in force in areas in which that Act is not in force.

^[4] This clause in square brackets was inserted in section 3 by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 3, post, p. 601.

(Sec. 4.)

and every such parent or guardian shall, within the said period, comply with the requisition];

Public vaccinator bound to vaccinate all children brought to him.

and any public vaccinator to whom such child, or to whom any child under the age of fourteen years, is brought for vaccination at such vaccine-station, or who is requested to vaccinate such child elsewhere than at a public vaccine-station, is hereby required, with all reasonable despatch, subject to the conditions hereinafter mentioned, to vaccinate such child.

Inspection.

[1]4. [3] At an appointed hour upon the same day in the following week after the operation shall have been performed, or on an earlier day, if required, the parent or guardian shall cause the child to be inspected by the operator, or by any person deputed for that purpose by the Superintendent of Vaccination, that the result of the operation may be ascertained;

[8] and it shall be the duty of any public vaccinator whohas vaccinated a child elsewhere than at a public vaccine-station to visit the child at the time and for the purpose above mentioned, whether he is requested to do so or not,

[2]4. [4] At an appointed hour Inspection. upon [5] a day not less than seven or more than ten days after the operation shall have been performed, or on an earlier day, if required, the parent or guardian shall cause the child to be inspected [6][by the operator (if a medical practitioner) or by an Inspector,] that the result of the operation may be ascertained;

[7][and, when any public vaccinator has vaccinated a child elsewhere than at a public vaccinestation, an Inspector shall visit the child at the time and for the purpose above mentioned, whether he is requested to do so or not.]

^[1] Section 4 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

^[2] Section 4 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933, is in force.

The difference between the two sections lies in the words printed in italics. [3] This clause and the next clause in section 4 were substituted for the original paragraph by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887),

paragraph by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1881), s. 4, post, p. 602.

[4] This clause in s. 4 (except the portion printed in italics) was substituted for part of the original paragraph by ibid, s. 4, post, p. 602.

[5] These words in italics were substituted for the words "the same day in the following week" by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 7 (1), post, p. 934], for areas in which that Act is in force.

[6] The words in square brackets were substituted for the words "by the operator or by any person deputed for that purpose by the Superintendent of Vaccination" by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 7 (2), post, p. 934], for areas in which that Act is in force.

[7] The words in square brackets were substituted for the words printed opposite to them by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 7 (3), post, p. 935], for areas in which that Act is in force.

^{7 (3),} post, p. 935], for areas in which that Act is in force.

(Sec. 5.)

unless the Superintendent Vaccination has deputed some other person to act for such public vaccinator in this behalf.

Repetition of vaccination.

In the event of the vaccination being unsuccessful, such parent or guardian shall, if the publicvaccinator or medical practitioner so direct, cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

No fee shall be charged by a public vaccinator for anything done by him under this section.

If child be unfit for

[3]5. If any public vaccinator or vaccination, medical practitioner shall be of certificate in Form A opinion that any child is not in a to be given, fit state to be vaccinated, he shall forthwith deliver to the parent or guardian of such child a certificate under his hand according to the form of Schedule A hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

which shall remain in force for three months, renewable.

The said certificate shall remain in force for three months only, but shall be renewable for successive but shall be periods of three months until the public vaccinator or medical practitioner shall deem the child to be in

In the event of the vaccination Repetition being unsuccessful, such parent or tion. guardian shall, if [1]the Inspector or medical practitioner so direct, cause the child to be forthwith again vaccinated and subsequently inspected as on the previous occasion.

No fee shall be charged by [2] an Inspector for anything done by him under this section.

[4]5. If any [5] Inspector or II child be medical practitioner shall be of unfit for vaccination, opinion that any child is not in a certificate in fit state to be vaccinated, he shall Form A to be given, forthwith deliver to the parent or guardian of such child a certificate under his hand according to the of Schedule Α hereto annexed, or to the like effect, that the child is then in a state unfit for vaccination.

The said certificate shall remain which shall in force for [6] one month only, but force for shall be renewable for successive one month, but shall periods of [6] one month until the be renew-[5] Inspector or medical practitioner able. shall deem the child to be in a fit

^[1] The words "the Inspector" were substituted for the words "the public vaccinator" by the Bengal Vaccination (Amendment) Act. 1911 (Ben. Act 2 of 1911. s. 7 (4), post, p. 935], for areas in which that section is in force.

^[2] The words "an Inspector" were substituted for the words "a public vaccinator" by ibid. s. 7 (5), for areas in which that section is in force.

^[3] Section 5 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911. post, p. 933). is not in force.

^[4] Section 5 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two sections lies in the words printed in Italics.

^[5] The word "Inspector" was substituted for the words "public vaccinator" by the Bengal Vaccination (Amendment) Act. 1911 [Ben. Act 2 of 1911, s. 8 (1),

post, n. 935], for areas in which that section is in force.
[6] The words "one month" were substituted for the words "three months" by ibid, s. 8 (2), for areas in which that section is in force.

(Sec. 6.)

a fit state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule C hereto annexed, according to the provisions of section seven, if warranted by the result.

Provision for giving certificate of insusceptibility of successful vaccination. [1]6. If any public vaccinator or medical practitioner shall find

that a child whom he has three times unsuccessfully vaccinated is insusceptible of successful vaccination, or

that the child brought to him for vaccination has already been successfully inoculated or had the small-pox,

he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form of Schedule B hereto annexed, or to the like effect;

and, if the Superintendent of Vaccination be satisfied that such child is insusceptible of successful vaccination, he shall endorse such certificate, and the parent or guardian shall thenceforth not be required to cause the child to be vaccinated.

state for vaccination, when the child shall, with all reasonable despatch, be vaccinated, and a certificate of successful vaccination given in the form of Schedule C hereto annexed, according to the provisions of section seven, if warranted by the result.

[2]6. (1) If any Inspector or Procedure where chi medical practitioner finds—

(a) that a child brought for have had vaccination has already or to be had small-pox, or insuscept

where child
is found to
ix have had
small-pox
y or to be
insusceptible of
successful
vaccina-

(b) that a child who has been vaccinathree times unsuccessfully vaccinated is insusceptible of successful vaccination,

he shall deliver to the parent or guardian of such child a certificate under his hand, according to the form in Schedule B hereto annexed, or to the like effect.

- (2) If the Superintendent is satisfied that such child has already had small-pox, or is insusceptible of successful vaccination he shall endorse such certificate.
- (3) Such endorsement shall operate as an exemption from liability to vaccination,—
 - (I) in case (a) in sub-section (1)
 —absolutely, and
 - (II) in case (b) in that subsection—for a period of twelve months.

The difference between the two sections lies in the words printed in italics.

^[1] Section 6 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post p. 933), is not in force.

^[2] Section 6 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, T911 (Ben. Act 2 of 1911, post, p. 933), is in force. The present section was substituted by section 9 of that Act for section 6 printed opposite to it.

(Sec. 7.)

[1](4) Upon the expiration of the said period, the parent or guardian of such child shall forthwith cause the child to be vaccinated again;

and, if an Inspector or a medical practitioner finds after two further unsuccessful vaccinations that the child is insusceptible of successful vaccination, he shall deliver to the parent or guardian a further certificate under his hand, according to the form of Schedule B hereto annexed, or to the like effect;

and, if the Superintendent of Vaccination be again satisfied that the child is insusceptible of successful vaccination, he shall endorse such certificate, and such endorsement shall operate as an absolute exemption from liability to further vaccination.

Provision for giving certificates of successful vaccination.

[2]7. Every public vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child,

and shall have ascertained that the same has been successful,

shall deliver to the parent or guardian of such child a certificate according to the form of Schedule C hereto annexed or to the like

[8]7. [4] [When a public vaccin- Provision ator or medical practitioner has for giving performed the operation of vaccina- of successful tion upon any child,

vaccination.

and an Inspector or such practitioner has ascertained that the same has been successful.

such Inspector or practitioner, as the case may be, shall deliver to the parent or guardian of such child a certificate according to the form

^[1] See footnote [2] on the preceding page.

^[2] Section 7 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

^[3] Section 7 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two sections lies in the words printed in italics.

^[4] The words in square brackets in section 7 were substituted for the words printed opposite to them by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 10, post, p. 935], for areas in which that section is in force.

(Secs. 8-10.)

effect, certifying that the said child has been successfully vaccinated.

No fee to be charged for vaccination at a public vaccinestation, or for certificates.

8. [1] No fee or remuneration shall be charged by any public vaccinator to the parent or guardian of any child for any such certificate as aforesaid, nor for any vaccination done by him in pursuance of this Act at a public vaccine station.

of Schedule C hereto annexed or to the like effect, certifying that the said child has been successfully vaccinated.

8. [2] No fee or remuneration shall be charged by any [3] In- for-vaccinaspector to the parent or guardian tion at a of any child for any such certi-vaccineficate as aforesaid, nor [4] by any station or for-certifipublic vaccinator for any vacci-cates. nation done by him in pursuance of this Act at a public vaccine-

No fee to

Proviso.

But, when a public vaccinator attends at the request of the parent or guardian elsewhere than at a public vaccine-station for the purpose of vaccinating a child, he shall be paid a fee not exceeding eight annas; such fee to be devoted to the purposes in the next succeeding section mentioned.

Fees how to be appropriated.

9. All such fees shall, in Calcutta, be paid in by the public vaccinator to the credit of the Corporation of the Town of Calcutta^[5], and be by them appropriated for the purposes of this Act.

In places outside Calcutta such fees shall be appropriated as the Lieutenant-Governor may from time to time direct.

Superintendent of Vaccination or his assistants

[7]10. The Superintendent of Superinten [6]**10.** The Superintendent υf hereinafter Vaccination as hereinafter ap- Vaccination Vaccination, as appointed, or any of his assistants, or his assistants, assistants

The difference between the two clauses lies in the words printed in italics.

The difference between the two sections lies in the words printed in italics.

^[1] The first clause of section 8 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben Act 2 of 1911, post, p. 933), is not in force.

^[2] The first clause of section 8 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

^[3] The word "Inspector" was substituted for the words "public vaccinator" by the Bengal Vaccination (Amendment) Act, 1911, [Ben. Act 2 of 1911, s. 11(1). post, p. 935] for areas in which that section is in force.

^[4] The words "by any public vaccinator" were inserted by ibid, s. 11 (2), for areas in which that section is in force.

^[5] The name of this body is now "the Corporation of Calcutta"-see the Calcutta Municipal Act, 1923 (Ben. Act 3 of 1923), in the Supplement to the Bengal Code, 1913-15, p. 425

^[6] Section 10 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

^[7] Section 10 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

vaccinated.

(Secs. 11-13.)

may inspect ants, may, from time to time, vaccination inspect the vaccination of any child, of child. whether performed by a public vaccinator or medical practitioner; and may, if he think fit, direct that

such child be forthwith again

[1] or any Inspector, may, from may inspect time to time, inspect the vaccina- of child. tion of any child, whether performed by a public vaccinator or medical practitioner; and may, if he think fit, direct that such child be forthwith again vaccinated.

VACCINATION OF UNPROTECTED PERSONS.

11. Every unprotected person may, whenever the said Superinten- Unprotected dent of Vaccination shall deem it advisable, be served with a notice be vacciin the form in Schedule D hereto annexed, requiring him, within fifteen nated. days after the service of the same, to submit himself to a public vaccinator or medical practitioner to be vaccinated; and every such person shall, within the said period, submit himself to a public vaccinator or medical practitioner for vaccination.

12. The provisions of sections three to ten (both inclusive) shall Former apply, with the necessary alterations, to the case of unprotected persons. applicable.

13. The powers conferred by sections eleven and thirty upon the Health said Superintendent of Vaccination may, in the case of unprotected Port may persons arriving in the Port of Calcutta, be exercised by the Health cause Officer of the said Port immediately upon their arrival.

vaccination of unprotected persons on their arrival.

[2] If a vessel arrives in the said Port of Calcutta having on board Health any person suffering from the disease of small-pox, the said Health in certain Officer may, if he deem it expedient in order to prevent the risk of cases, the contagion of small-pox being conveyed into the Town or Suburbs nediate of Calcutta, require any unprotected person on board such vessel to vaccination submit himself forthwith to be vaccinated; and every such person shall, protected before leaving the vessel, submit himself to the said Health Officer, or person on board. any person duly authorized to act in this behalf, for vaccination:

[2]Provided that nothing herein contained shall apply to any vessel Proviso. belonging to, or in the service of, Her Majesty or the Government of India, or to any vessel belonging to any foreign Prince or State.

^[1] The words in italics were inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 12, post, p. 935), for areas in which that section is in force.

^[2] This paragraph and proviso in s. 13 were added by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 5, post, p. 602.

(Secs. 13A-14.)

[1] MISCELLANEOUS.

Occupier of house, etc., to allow access.

[1] 13A. [2] Every person occupying any house, enclosure, vessel or other place within the limits of the Town or Port of Calcutta, or the Suburbs of Calcutta, or the town of Howrah, shall allow the Superintendent of Vaccination, or a medical practitioner, or public vaccinator duly authorized by him in this behalf, such access thereto as he may require for the purpose of ascertaining whether the inmates are protected or not, and as, having regard to the customs of the country, may be reasonable.

[1]13A. [8] Every person occupy. Occupier ing any house, enclosure, vessel or other place within the limits of allow access, the Town or Port of Calcutta, or the Suburbs of Calcutta, or the town of Howrah, shall allow the Superintendent of Vaccination, or a medical practitioner, or public vaccinator [4] or Inspector duly authorized by him in this behalf, such access thereto as he may require for the purpose of ascertaining whether the inmates are protected or not, and as, having regard to the customs of the country, may be reasonable.

Whenever it is necessary to ascertain whether a woman is protected or not, the investigation shall be conducted by a female with strict regard to the habits and customs of the country.

PROCEDURE APPLICABLE TO THE TOWN OF CALCUTTA ONLY.

Public vaccinestations.

14. For the purposes of this Act, the Corporation of the Town of Calcutta (hereinafter called the Corporation) shall, subject to the approval of the Lieutenant-Governor, appoint [5] such stations for the performance of vaccination as they shall, from time to time, deem

Such stations shall be called "public vaccine-stations."

^[1] This heading and s. 13A were inserted by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 6, post, p. 602.

^[2] This clause of section 13A is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not

^[3] This clause of section 13A is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in

The difference between the two clauses lies in the words printed in italics.

^[4] The words "or Inspector" were inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 13, post, p. 936), for areas in which that section is in force.

^[5] For orders made under this clause of section 14, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 15-16.)

The Corporation shall appoint such public vaccinators and Appointvaccination-establishments for carrying out the purposes of this Act ment of as they shall, from time to time, deem fit.

vaccinators, etc. stations and hours

The positions of the public vaccine-stations fixed under the provisions Notificaof this section, and the days and hours of the public vaccinators' tion of attendance at each station, shall be published, from time to time, in such manner as the Corporation may direct.

[²]15. The

 \mathbf{of}

scale of fees under this Act.

such

establishments aforesaid, the pay-

ment of public vaccinators [3] and Inspectors, and the realization and

vaccination-

expenses

of attendance. Corporation may, Power of from time to time, make such rules, Corporaconsistent with this Act, as they tion to make may deem fit, for regulating the rules.

[1]15. The Corporation may, from time to time, make such rules, consistent with this Act, as they may deem fit, for regulating the expenses of such vaccinationestablishments aforesaid, the payment of public vaccinators, and the realization and scale of fees

under this Act.

16. The Health Officer for the Town of Calcutta shall be ex-officio Superin-Superintendent of Vaccination for the said Town.

tendent of Vaccina-

[4] Such officer, subject to the orders of the Lieutenant-Governor, shall have a general control over all the proceedings of public vaccinators, and shall perform such duties in connection with public vaccination, in addition to those prescribed by this Act, as shall be required by the Lieutenant-Governor.

[5] Such officer, subject to the tion. orders of the Lieutenant-Governor, shall have a general control over all the proceedings of public vaccinators[8] and Inspectors, and shall perform such duties in connection with public vaccination, in addition to those prescribed by this Act, as shall be required by the Lieutenant-Governor.

The difference between the two sections lies in the words printed in italics.

The difference between the two clauses lies in the words printed in italics.

Power of Corporation to make rules.

^[1] Section 15 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post p. 933), is not in force.

^[2] Section 15 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

^[3] The words "and Inspector" were inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 14, post, p. 936), for areas in which that section is in force.

^[4] This clause of section 16 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

^[5] This clause of section 16 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post p. 933), is in force.

(Secs. 17-19.)

The Lieutenant-Governor may appoint, if necessary, one or Assistant Superintend- more assistants to the Superintendent, and, from time to time, remove any such assistant.

Expenses of 17. The expenses of all vaccination-establishments under this Act, ments to be and of the supply of lymph, in Calcutta, shall, unless the Lieutenanta charge on Governor otherwise direct, be defrayed by the Corporation. Corporation.

REGISTRATION.

Registrar of Births to give notice of requirement of vaccination.

18. On the registration of the birth of any child under the provi- Ben. Act sions of Chapter X of the Calcutta Municipal Consolidation Act, 1876, of 1876. or of any other law[1] for the time being in force, the Registrar shall deliver to the person giving information of such birth a printed notice in the form of Schedule E hereto annexed, or to the like effect; and such notice shall have attached thereto the several forms of certificates prescribed by this Act.

Duplicates of all certificates to he transmitted to the Registrar.

19. [2] Every public vaccinator or medical practitioner, who gives to any parent or guardian a certificate in any of the forms of the said Schedules A, B and C, shall, within twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births of the district where the birth of the child on whose account such certificate was given has been registered;

19. [3] Every [4] Inspector medical practitioner, who gives to of all certificates any parent or guardian a certificate to be in any of the forms of the said transmitted to the Schedules A, B and C, shall, with-Registrar. in twenty-one days after giving the same, transmit a duplicate thereof to the Registrar of Births of the district where the birth of the child on whose account such certificate was given has been registered;

Or Duplicates

^[1] Ben. Act 4 of 1876 was repealed and re-enacted by Ben. Act 2 of 1888, which again has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899). The latter Act again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act 3 of 1923), printed in the Supplement to the Bengal Code, 1913-15, p. 425.

^[2] This clause of section 19 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933) is not in force.

^[3] This clause of section 19 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two clauses lies in the words printed in italics.

^[4] The word "Inspector" was substituted for the words "public vaccinator" by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 936), s. 15, for areas in which that section is in force.

1876.

(Secs. 20-23.)

or, if that be not known to him, or if the child was born out of the Town of Calcutta, or his birth has not been registered in the said Town, to the Registrar of the district within which the child was vaccinated or presented for vaccination.

20. The Registrar of Births shall keep a book, in such form Registrar to keep a as may from time to time be prescribed by the rules made under section vaccination 33, in which he shall enter minutes of the notices of vaccination given notice and by him as herein required, and shall also register the duplicates of book. certificates transmitted to him as herein provided.

21. He shall also prepare and keep a duplicate of the register of and also a births required to be kept by him under the provisions of the Calcutta register of Municipal Consolidation Act. 1876, or of any other law[1] for the time births, with being in force, with such additional columns as shall, from time to time concerning be prescribed by the rules made under section 33, in which he shall vaccination, record the date of every duplicate certificate in the form of the said Schedule B or Schedule C received by him concerning any child whose birth he has registered, and make an entry to the effect that the child has been vaccinated or is insusceptible of vaccination, as the case may be.

22. He shall also keep a register of postponed vaccinations in and also the form of Schedule F hereto annexed, in which he shall record the postponed name of every child concerning whom he receives a duplicate certi- vaccinations. ficate in the form of the said Schedule A, together with the date of such duplicate certificate, and of each such successive duplicate certificate, if he receives more than one; and shall show the number and year of the entry, if any, in the register of births in which such child's birth has been registered.

23. Every Registrar shall transmit, on or before the fifteenth Transmission of every month, to the Superintendent of Vaccination, a return, in of returns to Superin such form as may, from time to time, be prescribed by the rules made tendent. under section thirty-three, of all cases in which duplicate certificates have not been duly received by him, in pursuance of the provisions of this Act, during the last preceding month.

[1] Ben. Act 4 of 1876 was repealed and re-enacted by Ben. Act 2 of 1888, which again has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899). The latter Act again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act 3 of 1923), printed in the Supplement to the Bengal Code, 1913-15), p. 425.

(Secs. 24-26.)

Lieutenant-Governor may direct any person to perform duties of Registrar. 24. The Lieutenant-Governor may direct that the duties imposed on the Registrar of Births under sections nineteen, twenty, twenty-one, twenty-two and twenty-three shall be performed by any other person appointed by the Lieutenant-Governor.

PROCEDURE APPLICABLE OUTSIDE THE TOWN OF CALCUTTA.

Powers of Corporation may be exercised in mufassal by Magistrate of the district; and of Superintendent of Vaccination by Civil Surgeon.

Powers of Corporation any local area to which this Act may hereafter be extended, the exercised in Magistrate of the district[1] may exercise all or any of the powers by Magistrate this Act conferred upon the Corporation;

and the Civil Surgeon of the district, or such other officer as the Lieutenant-Governor may, from time to time, appoint in that behalf, shall exercise the powers and perform the duties by this Act assigned to the Superintendent of Vaccination.

PROSECUTIONS AND OFFENCES.

Magistrate may make an order for the vaccination of any unprotected child under fourteen years. 26. If the Superintendent of Vaccination shall notify in writing to a Magistrate that he has reason to believe, from the statement of an informant or otherwise, that any child under the age of fourteen years is an unprotected child, and that he has given notice to the parent or guardian of such child to procure its being vaccinated, and that the said notice has been disregarded, such Magistrate may summon such parent or guardian to appear with the child before him; and if the Magistrate shall find, after such inquiry as he shall deem necessary, that the child is an unprotected child, he may, whether the child has been produced or not, make an order directing such child to be vaccinated within a certain time.

If the child is at any time produced before him, the Magistrate may, unless the child is certified under section five to be in a state unfit for vaccination, order it to be vaccinated forthwith in his presence, and in that case may punish such parent or guardian, for any recusancy under this clause, with fine which shall not exceed five rupees.

^[1] As to the exercise by District Boards of powers of appointment, etc., of public vaccinators and of Inspectors of Vaccination (to exercise the functions of the Superintendent of Vaccination), and powers of the District Magistrate, see the B. & O. Local Self-Government Act of 1885 (Ben. Act 3 of 1885), ss. 92 to 94, post, p., 566.

(Secs. 27-28.)

If, at the expiration of the time appointed by the Magistrate, the Penalty for child shall not have been vaccinated, or shall not be shown to be then disobedience unfit to be vaccinated, or to be insusceptible of vaccination, the person order. upon whom such order shall have been made shall, unless he can show some reasonable ground for his omission to carry the order into effect, be punished with fine which may extend to fifty rupees:

Provided that, if the Magistrate shall be of opinion that the person Proviso for is improperly brought before him, and shall refuse to make an order for costs to the vaccination of the child, he may direct the said Superintendent to improperly disclose the name of his informant, if any, and may order such informant summoned. to pay to such person such sum of money as the Magistrate shall consider a fair compensation for expenses and loss of time in attending before him:

Provided also that nothing in this section shall be held to compel the production before a Magistrate of any female child above the age of eight years.

27. If any parent or guardian intentionally omits to produce a child Penalty for whom he has been summoned to produce under the last preceding section, not producing he shall be liable to fine which may extend to one hundred rupees and a child. to a further fine of twenty-five rupees for every day during which the offence continues:

Provided that the aggregate amount of fine for such offence shall not exceed one thousand rupees.

Penalty for neglect to be vaccinated.

28. Whoever, in contravention of this Act,—

[1](a) neglects without reasonable excuse to submit himself, within fifteen days after the service on him of the notice prescribed by section eleven, to a public vaccinator or medical practitioner to be vaccinated, or after vaccination to be inspected, or

[2](a) neglects without reasonable excuse to submit vaccinated. himself, within fifteen days after the service on him of the notice prescribed by section eleven, to a public vaccinator or medical practitioner to be vaccinated, or [8] to the operator (if a medical

Penalty for neglect to

^[1] Clause (a) of section 28 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

^[2] Clause (a) of section 28 is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two clauses lies in the words printed in italics.

^[3] The words in italics were inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 16, post, p. 936), for areas in which that section is in force.

(Secs: 29-29A.)

practitioner) or to an Inspector after vaccination to be inspected, or

Penalty for neglect to take child to be vaccinated. etc.

- (b) neglects without reasonable excuse to take or cause a child to be taken to be vaccinated, or after vaccination to be inspected, or
- (c) neglects to fill up and sign and give to any person or to the parent or guardian of any child any certificate which such person, parent or guardian is entitled to receive from him, or to transmit a duplicate of the same to the Registrar of Births, [1] or
- [2](d) refuses without reasonable excuse to submit himself to be vaccinated when required so to do by the Health Officer exercising the powers conferred upon him by section thirteen.

shall be punished for each such offence with fine which may extend to fifty rupees.

No prosecution under this section shall be instituted after the expiry of twelve months from the date on which the offence has been committed.

Penalty for certificate.

29. Whoever wilfully signs or makes, or procures the signing or making or signing false making of, a false certificate or duplicate certificate under this Act, shall be punished with imprisonment of either description, within the meaning of the Indian Penal Code, for a term which may extend to six months, or with fine which may extend to one hundred rupees, or with both:

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Penalty for obstructing public vaccinator in the his duties.

[8] [4] 29A. Whoever voluntarily obstructs any public vaccinator in the discharge of the duties assigned discharge of to him as such shall be punished for each such offence with fine which may extend to fifty rupees.

[8][5] 29A. Whoever voluntarily Penalty for obstructs any public vaccinator public [6] or Inspector in the discharge of vaccinator or Inspector the duties assigned to him as such in the shall be punished for each such discharge of his offence with fine which may extend duties. to fifty rupees.

[1] The word "or", in s. 28 (c), was added by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887), s. 7, post, p. 602.

^[2] Clause (d) was added by ibid.

^[3] Section 29A was inserted by ibid, s. 8, post, p. 602.

^[4] Section 29A is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force:

^[5] Section 29A is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two sections lies in the words printed in italics.

^[6] The words "or Inspector" were inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 13, post, p. 936), for areas in which that Act is in force.

(Secs. 29B-32.)

Vexations entry by public vaccinator.

[1][2] 29B. Any public vaccinator who vexatiously and unnecessarily enters any house, enclosure, vessel or other place, on pretence of ascertaining whether the inmates, or any of them, are protected or not, shall, for every such offence, be punished with fine which may extend to fifty rupees.

[1][3]29B. Any public vaccinator Vexatious [4] or Inspector who vexatiously entry by and unnecessarily enters house, enclosure, vessel or other place, on pretence of ascertaining whether the inmates, or any of them, are protected or not, shall, for every such offence, be punished with fine which may extend to fifty rupees.

any vaccinator or Inspector.

30. All offences under this Act shall be cognizable by a Magistrate, Prosecutions subject to the provisions of any law[5] for the time being in force for the to be institrial of offences; but no complaint of any such offences shall be Lieutenantentertained unless the prosecution be instituted by order of, or under or Superauthority from, the Lieutenant-Governor or the Superintendent of intendent of Vaccination. Vaccination.

31. In any prosecution for neglect to procure the vaccination of a Prosecution child it shall not be necessary in support thereof to prove that the defendant had received notice from the Registrar or any other officer of the requirements of the law in this respect;

but, if the defendant produce any such certificate as hereinbefore described, or the duplicate of the Register of Births or the Register of Postponed Vaccinations kept by the Registrar as hereinbefore provided, in which such certificate shall be duly entered, the same shall be a sufficient defence for him, except in regard to the certificate according to the form of the said Schedule A, when the time specified therein for the postponement of the vaccination shall have expired before the time when the information shall have been laid.

MISCELLANEOUS.

32. It shall be the duty of the Superintendent of Vaccination to Annual show in an annual return the number of children successfully vaccinated, made of the the number whose vaccination has been postponed, and the number number certified to be insusceptible of successful vaccination during the year; vaccinated, and generally to fill up any forms that may be prescribed, from time to etc. time, by the Lieutenant-Governor or the Corporation.

^[1] Section 29B was inserted by the Bengal Vaccination (Amendment) Act, 1887

⁽Ben. Act 2 of 1887, s. 8, post, p. 602).

[2] Section 29B is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

[3] Section 29B is in force in this form in areas in which the Bengal Vaccination

⁽Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the sections lies in the words printed in italics.

[4] The words "or Inspector" were inserted by the Bengal Vaccination (Amend-

ment) Act, 1911 (Ben. Act 2 of 1911, s. 13, post, p. 936), for areas in which that section is in force.

^[5] See now the Code of Criminal Procedure, 1898 (5 of 1898).

(Sec. 33.)

Lieutenant-Governor may, from time to time, make make rules. The Lieutenant-Governor may, from time to time, make rules. The rules [1] or issue orders [2], consistent with this Act,—

- [3] (a) determining the qualifications to be required of public tions to be required of public vaccinators;

 [4] (a) determining the qualifications to be required of public vaccinators;

 [5] and Inspectors;
 - (b) regulating the scale of fees to be paid outside the town of Calcutta:
 - (c) regulating the gratuitous vaccination of such females as are by the custom of the country unable to attend at the public vaccine-stations and are too poor to pay fees;
 - (d) providing for the supply of lymph;
 - [6] (e) regulating the books and forms to be kept by the public vaccinators or by Registrars, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act; and generally

[7] (c) regulating the books and forms to be kept by the public vaccinators [5] and Inspectors or by Registrars, and also such forms as shall be required for the signature of medical practitioners under the provisions of this Act; and generally

^[1] For rules made under section 33, see the B. and O. Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[2] As to the power of Commissioners to make rules for the guidance of District Boards in matters relating to vaccination, see the B. & O. Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 95, post, p. 566.

^[3] Clause (a) is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

^[4] Clause (a) is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 953), is in force.

The difference between the two clauses lies in the words printed in italics.

^[5] The words "and Inspectors" were inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 14, post, p. 933), for areas in which that section is in force.

^[6] Clause (e) is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

^[7] Clause (e) is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911), is in force.

The difference between the two clauses lies in the words printed in italics.

(The First Schedule.)

- [1](f) for the guidance of public vaccinators and others in matters connected with the working of this Act.
- $\lceil 2 \rceil$ (f) for the guidance of public vaccinators [3] and Inspectors and others in all matters connected with the working of this Act.

All such rules or orders shall be published in the Calcutta Gazette.

[4]THE FIRST SCHEDULE. (See section 3.)

To

(Here insert the name of the parent or quardian.)

TAKE notice that you are hereby required, under the provisions of the Bengal Vaccination Act, 1880, to take, or cause (here insert the name of the child), the child of (here insert the name of the father), to be taken to a public vaccine-station for vaccination, or to cause it to be vaccinated by some medical practitioner or public vaccinator within fifteen days from the service of this notice, and that in default of so doing you will be liable to a fine of fifty rupees.

The public vaccine-station nearest your house is at the days and hours for vaccination at that station are as follows:-

(Here insert the days and hours when the public vaccinator is in attendance.)

On the said (here insert the name of the child) being brought before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine-station in the town on the days, and within the hours prescribed for public vaccination at such station, the said (here insert the name of the child) will be vaccinated free of charge.

If you wish the said (here insert the name of the child) to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

Dated the

. 18 Superintendent of Vaccination, or Civil Surgeon (as the case may be).

[4] This Schedule was annexed to this Act by the Bengal Vaccination (Amendment) Act, 1887 (Ben. Act 2 of 1887, s. 3, post, p. 601) as amended by the Amending Act 1897 (5 of 1897) in Vol. I of this Code.

^[1] Clause (f) is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

[2] Clause (f) is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two clauses lies in the words printed in italics.

[3] The words "and Inspectors were inserted by the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, s. 14, post, p. 936), for areas in which that section is in force.

[4] This Schedule was appeared to this Act by the Bengal Vaccination (Amendment)

1

(Schedules A, B.)

[1]SCHEDULE A.

(See section 5.)

undersigned, hereby certify that, in my opinion the child of , resident at is not now in a fit and proper state to be vaccinated, and I do hereby recommend that the vaccination be postponed for the period of three months from this date.

day of Dated this , 18 (Signature of Medical Practitioner or Public Vaccinator.)

[5]SCHEDULE B.

(See section 6.)

fy that I have three times unsuccessfully vaccinated , the child of , residing at

(or that the child has already had small-pox, as the case may be),

[2]SCHEDULE A.

(See section 5.)

Τ. the undersigned, hereby certify that, in my opinion the child of , resident is not now in a fit and proper state to be vaccinated. dohereby recommend \mathbf{the} vaccination be postponed for the period of [3] one month from this date. Dated this day of , 18 .

(Signature of Medical Practitioner or [4] Inspector.)

[6] SCHEDULE B.

(See section 6.)

I, the undersigned, hereby certi- I, the undersigned, hereby certify that , the child of residing at , has already had small-pox

> (or, as the case may be) that I have (or a public vaccinator has) three times (or twice as the be) unsuccessfully casemay vaccinated , the child of

> > , residing at

^[1] Schedule A is in force in this form in areas in which the Bengal Vaccination (Amendment) Act. 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

[2] Schedule A is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two Schedules lies in the words printed in italics.

[3] The words "one month" were substituted for the words "three months" by the Bengal Vaccination (Amendment) Act. 1911 [Ben. Act 2 of 1911, s. 17(1), post, p. 936], for areas in which that section is in force.

[4] The word "Inspector" was substituted for the words "Public Vaccinator" by ibid. s. 17 (2), for areas in which that section is in force.

[5] Schedule B is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933, is not in force.

[6] Schedule B is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force. The present Schedule was substituted by section 18 of that Act for the Schedule B printed opposite to it.

The difference between the two Schedules lies in the words printed in italics.

(Schedules C, D.)

and I am of opinion that the said child is insusceptible of successful vaccination.

Dated this day of . 18 (Signature of Medical Practitioner or Public Vaccinator.)

(Endorsement by Superintendent of Vaccination.)

and I am of opinion that the said child is insusceptible of successful vaccination.

Dated this day of , 19 (Signature of Medical Practitioner or Inspector.)

(Endorsement by Superintendent of Vaccination.)

[1]SCHEDULE C.

(See section 7.)

I, the undersigned, hereby certifv that , the child of , resident at has been successfully vaccinated by me.

Dated this day of . 18 (Signature of Medical Practitioner or Public Vaccinator.)

[2]SCHEDULE C.

(See section 7.)

I, the undersigned, hereby certify that the child of resident at age has been successfully vaccinated by me[3] (or by a public vaccinator).

Dated this day of .18 . (Signature of Medical Practitioner or [4] Inspector.)

SCHEDULE D.

(See section 11).

To

TAKE nontice that you are hereby required, under the provisions of the Bengal Vaccination Act, 1880, to submit yourself to a public vaccinator or medical practitioner within fifteen days from the service of this notice for vaccination, and that in default of so doing, you will be liable to a fine which may amount to fifty rupees.

The public vaccine-station nearest your house is at

^[1] Schedule C is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

[2] Schedule C is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two Schedules lies in the words printed in italics.

[3] The words in italics were inserted by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 19 (1), post, p. 936], for areas in which that section is in force. is in force.

^[4] The word "Inspector" was substituted for the words "Public Vaccinator" by ihid, s. 19 (2), for areas in which that section is in force.

(Schedule E.)

The days and hours for vaccination at that station are as follows:—

(Here insert the days and hours when the public vaccinator is in attendance.)

On your attending before a public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine-station in the town on the days and within the hours prescribed for public vaccination at such station, you will be vaccinated free of charge.

If you wish to be vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

Dated the

of

.18

Superintendent of Vaccination, or Civil Surgeon (as the case may be).

SCHEDULE E.

(Sec section 81.)

To

iHere insert the name of the parent, guardian, or other person who gives information of the child's birth.)

[1] TAKE notice that the child of (here enter the mother's name), registered, must be vaccinated under the provisions of the Bengal Vaccination Act, 1880, within one nation Act, 1880, within year from the date of its birth, under penalty.

[2] TAKE notice that the child of (here enter the mother's whose birth has this day been whose birth has this day been registered, must be vaccinated under the provisions of the Bengal Vaccimonths from the date of its birth, under penalty.

^[1] This clause of Schedule E is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in

^[2] This clause of Schedule E is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference between the two clauses lies in the words printed in italics.

^[3] The words "six months" were substituted for the words "one year" by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, s. 20(1), post, p. 936], for areas in which that section is in force.

(Schedule F.)

The public vaccine-station nearest to the house in which the child was born is at no. The days and hours for vaccination at that station are as follows:---

(Here insert the days and the hours when the public vaccinator is in attendance.)

On your taking or causing the child to be taken to the public vaccinator at the said station within the said hours on any of the said days, or at any other public vaccine-station in the city on the days and within the hours prescribed for public vaccination at such station, it will be vaccinated free of charge.

If you wish to have the child vaccinated at your own house, the public vaccinator will attend there upon payment of a fee of

[1] You should be careful to have one of the annexed forms of certificate filled in by the Public Vaccinator, or, if you employ a private medical practitioner to vaccinate the child, by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by a Public Vaccinator free of charge.

Dated the of

[2] You should be careful to have one of the annexed forms of certificate filled in by [3] an Inspector. or, if you employ a private medical practitioner to vaccinate the child, by such medical practitioner, and to keep the same in your possession. Any such certificate will be granted to you by [3] an Inspector free of charge.

, 18

Registrar of Births.

SCHEDULE F.

(See section 22.)

Register of Postponed Vaccinations for the district of

Consecutive number.	Name of child.	BIRTH.			Signature
		Year.	Number of entry in register.	Date of certificate of postponement.	of Regis- trar.
1	Ram Chunder Dass	1878	12	1878. May 10	н. о.

^[1] This clause of Schedule E is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is not in force.

[2] This clause of Schedule E is in force in this form in areas in which the Bengal Vaccination (Amendment) Act, 1911 (Ben. Act 2 of 1911, post, p. 933), is in force.

The difference in the two clauses lies in the words printed in italics.

[3] The words "an Inspector" were substituted for the words "the Public Vaccinator" by the Bengal Vaccination (Amendment) Act, 1911 [Ben. Act 2 of 1911, post, p. 936], for areas in which that section is in force.

s. 20 (?), post, p. 936], for areas in which that section is in force.

BENGAL ACT 6 OF 1880.

(THE BENGAL DRAINAGE ACT, 1880.)

CONTENTS.

PRELIMINARY.

PREAMBLE.

SECTION.

- 1. Short title.
 - Extent.
- (Commencement.) Repealed.
 2. Repeal of Bengal Act 5 of 1871.
- 3. Interpretation-clause.

PART I.

APPOINTMENT OF COMMISSIONERS AND CONDUCT OF BUSINESS.

- 4. Lieutenant-Governor to appoint Commissioners.
- 5. Lieutenant-Governor to appoint Chairman.
- Commissioners may sue and be sued in his name.

 6. Meetings of Commissioners and quorum.

- 7. Extraordinary meetings. 8. Presidency of meetings.
- 8. Frestdency of meetings.
 9. (1) Transaction of business at meetings.
 (2) Delegation of powers to Committee.
 (3) Election of Chairman of Committee.
 (4) Adjournment, voting, etc., of Committee.
 10. Power to appoint servants.
 11. When objects of their appointment fulfilled, Lieutenant-Governor may direct Commissioners' powers and functions to cease.

PART II.

DRAINAGE SCHEME.

- 12. Commissioners to cause a notification of the scheme to be published.
- 13. List of persons assenting or objecting to be published.
- 14. (1) Commissioners how to ascertain what proprietors have assented.
 (2) Vote for estate, tenure, etc., held by two or more co-sharers.

 15. Persons voting to specify the extent of their lands.
 16. (1) Commissioners to decide who is entitled to vote.
 (2) Vote for property held by a minor or lunatic.
- - (3) Case of landholder not found.
- 17. If half of landholders agree, Commissioners to consider the scheme submitted.
- 18. Power to proceed with portion of scheme.
- 19. Scheme approved by Commissioners to be laid before the Lieutenant-Governor.
- 20. (1) Power to re-consider scheme and modify it.
 (2) Publication of modified scheme.

SECTION.

21. Power for the acquisition of land.

22. Lieutenant-Governor may order scheme to be carried out.

23. Power to Lieutenant-Governor to modify scheme.

24. (1) Claims to compensation for damage caused in carrying out scheme or works. Compensation to be assessed by the Commissioners.

Reference to Civil Court if amount assessed be not accepted.

(2) Reference to Civil Court where amount of compensation agreed to or settled by Court, but dispute as to its apportionment.

(3) Reference may in certain cases be transferred to Subordinate Judge or Munsif for disposal.

PART III.

EXPENDITURE AND APPORTIONMENT.

25. Cost of compensation, etc., to be deemed part of expense of construction. Such expense may be defrayed by advances from the public funds.

26. Interest to be charged on such advances.

26A. Rate of interest, and barring of compound interest. 27. Reports to be made and expenditure certified.

- 28. (1) Commissioners upon expiry of three years from completion report to classify lands benefited by the works, distinguishing between improved lands and reclaimed lands.
 - (2) Cost of construction with interest to be apportioned upon the improved lands and reclaimed lands. Amount payable for the improved lands not to exceed value of improvement.

- 29. (Repealed.)
 30. When the land is part of a tenure, etc., Commissioners may declare who shall be deemed liable as landholders.
- 31. Amounts made payable to be a charge upon the improved lands and reclaimed lands respectively. Secretary of State for India in Council to have a perpetual lien for their recovery.

32. Commissioners to report apportionment.
33. In default of Commissioners, officer appointed by Lieutenant-Governor to make apportionment and report. Reports to be published.
 Appeal against apportionment.

36. Final determination of apportionment.

36 A. Power to add to, or alter, declaration as to names of persons liable to pay.

PART IV.

RECOVERY OF SUMS DUE TO THE COLLECTOR.

37. Collector to serve notice of apportionment, requiring payment or engagement

38. If amount not discharged, the Collector may recover it as a public demand. 39. Collector may also, with sanction of Board of Revenue, raise unpaid amount by leasing or mortgaging the improved or reclaimed lands.

40. Recovery of unrealized portion of charge.

41. Power to repay advances.

PART IV-A.

RECOVERY OF SHARE OF PAYMENTS FROM CO-SHARERS.

41A. Power to recover share of payments from co-sharers.

PART V.

RECOVERY BY LANDHOLDERS OR SUPERIOR TENANTS OF THE COSTS OF THE WORKS FROM PERSONS HOLDING LAND UNDER THEM.

42. Proprietor may recover from subordinate tenants.

43. Recovery by superior tenant.

SECTION.

44. (1) Mode and time of payment.

(2) Provision in case of dispute as to the amount to be paid.

(3) Collector to decide objection.

44A. Recovery, under the certificate procedure, of payments made in respect of land held by tenants.

44B. Bar to recovery of money from tenants in certain cases.

45. Proviso.

PART VI.

MISCELLANEOUS.

46. Drainage works to be subject to the laws relating to embankments.

47. Lands and works to be vested in Collector on behalf of Secretary of State.

(2) Surplus profits from property vested in Collector under section 47 to be appropriated to payment of debt to Government.

(3) Surplus profits from property vested in Collector under section 47 to be appropriated to payment of debt to Government. (4) Cost of maintenance may be capitalized, and the capitalized amount levied. 49. Powers for taking evidence.

50. Rent-free lands may be deemed subordinate tenures.
51. Sum payable by holder of rent-free land to be payable in two instalments.
51A. Recovery, under the certificate procedure, of payments made in respect of land held free of rent or revenue.

51B. Further provisions as to applications under section 41A, 44A or 51A.

51C. Grant of certificate, and effect thereof.

51D. Power of Collector to suspend recovery of dues in case of failure of crops.

51E. Bar to jurisdiction of Courts in respect of order of suspension.

51F. Procedure when landholder or tenant collects dues during period of suspension 51G. Extension of period for payment of instalments when order of suspension made. 51H. Extension of period of limitation when order of suspension made.

51J. Interest not to accrue during period of suspension.

- 52. Service of notices.53. Proceedings not to be invalidated by formal errors. 54. Portion of scheme may be deemed separate scheme.
- 55. Lieutenant-Governor may empower other person to act for Collector.

56. Collector may delegate authority.
57. Control of Commissioner.

58. Power to make, alter and cancel rules.

Publication of rules.

PART VII.

SPECIAL PROVISIONS FOR WORKS CARRIED OUT UNDER BENGAL ACT 5 OF 1871.

59. Portions of this Act applicable to works carried out under Bengal Act 5 of 1871. 60 to 63. (Repealed.)

SCHEDULE SCHEDULE B.

BENGAL ACT 6 OF 1880.

(THE BENGAL DRAINAGE ACT, 1880.)[1]

(9th June, 1880.)

An Act to provide for the drainage and improvement of lands.

Whereas it is expedient that provision should be made for the better Preamble. drainage and improvement of lands in the territories administered by the Lieutenant-Governor of Bengal; [2] It is hereby enacted as follows:—

PRELIMINARY.

1. This Act may be called the Bengal Drainage Act, 1880: Short title. It extends to all the territories for the time being under the Extent. administration of the Lieutenant-Governor of Bengal. [2]

(Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).

- 2. Bengal Act 5 of 1871 (the Hooghly and Burdwan Drainage Act) Repeal of shall be repealed on and from the date upon which this Act comes into Bengal Act 5 of 1871. force; but, subject to the provisions of this Act, this repeal shall not affect the past operation of such Act, or anything duly done or suffered, or any right, privilege, obligation or liability acquired, accrued or incurred thereunder.
- 3. In this Act, unless there be something repugnant in the subject Interpretation clause. or context,-
- "the Collector" means the officer in charge of the revenue "The jurisdiction of the district within which the lands which form the subject Collector." of a scheme under this Act, or the greater portion of such lands, are

It is in force in the Sonthal Parganas—see Vol. IV, Pt. IV; but its application is barred-in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

OTHER ENACTMENTS.—As to the drainage of rural areas, see also the Bengal Irrigation Act, 1876 (Ben. Act 3 of 1876), ante, p. 205 and the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895), post, p. 631.

The Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), does not apply to any embankment, land or water-course which is under the operation of Bengal Act 6 of 1880—see Bengal Act 2 of 1882, s. 91, post, p. 483.

[21 This includes the present province of Bibar and Ovices great the district of

[2] This includes the present province of Bihar and Orissa except the district of Sambalpur.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1879, Pt. IV, p. 64: for Report of Select Committee, see ibid, 1880, Pt. IV, p. 100; and for Proceedings in Council, see ibid, 1879, Supplement, pp. 331, 391 and 1448; ibid, 1880, Supplement, pp. 285, 394 and 409.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—

(Sec. 3.)

situate. If any doubt arises as to whether the greater portion of the lands is situate within one or two or more districts, the Board of Revenue[1] shall decide the point, and such decision shall be final:

" Certificate officer."

[2]" Certificate officer" means a Certificate officer as defined in clause (2) of section 4 of the Public Demands Recovery Act, 1895 :[3] Ben. Act 1

"the Commissioners" means the Drainage Commissioners to be appointed under this Act:

"The Commissioners. " Estate."

" estate" means land included under one entry in the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law[4] for the time being in force by any Collector of a district, or a share of, or interest in, such land:

" Proprietor."

"proprietor" means a person who as owner is solely or jointly in possession of an estate:

" Tenure."

- "tenure" means-
 - (1) a permanent rent-paying interest in land, immediately subordinate to that of a proprietor and superior to that of a raiyat, extending to not less than one hundred standard bighas, affected or to be affected by any works under this Act:
 - (2) a permanent revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists no rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest:

" Undertenure."

- " under-tenure " means-
 - (1) a permanent rent-paying interest in land subordinate to that of a tenure-holder and superior to that of a raiyat, extending to not less than one hundred standard bighas, affected or to be affected by any works under this Act;
 - (2) a revenue-free or rent-free interest in land affected or to be affected by any works under this Act, when there exists a rent-paying interest in the same land between the proprietary interest in the estate and such revenue-free or rent-free interest:

[2] This definition of "Certificate officer" was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 2, post, p. 715.

[3] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to cl. (3) of s. 3 of the latter Act—see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, in Vol. III

[4] See the Land Registration Act, 1876 (Ben. Act 7 of 1876), ante, p. 237.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Sec. 4.)

Explanation.—The term "permanent" is used with reference to the tenure or under-tenure itself, and not with reference to the person who happens to hold such tenure or under-tenure for the time being. A tenure or under-tenure is none the less permanent, although held by a Hindu widow, a Sebait or a person subject to the Mitakshara law:

" landholder " and " holder of land " mean-

** Landof land."

(1) any person who as owner of an estate is solely or jointly in holder " and " holder possession thereof;

(2) any person who as owner of a tenure or under-tenure is solely or jointly in possession thereof:

where two or more persons are joint landholders, they shall be jointly and severally liable under this Act, except as is otherwise expressly provided herein:

" reclaimed land " means land which was unfit for cultivation before " Reclaimed the execution of any work under this Act, but which has been rendered land." productive by such works:

"improved land" means land which was more or less fit for "Improved cultivation before the execution of any works under this Act, but of land. which the productive powers have been increased by such works:

"Part" and "section" mean, respectively, a Part and section of "Part" this Act. section."

PART T.

APPOINTMENT OF COMMISSIONERS AND CONDUCT OF BUSINESS.

4. Whenever it appears expedient to the Lieutenant-Governor to Lieutenant-Governor carry out any scheme and plans for the drainage and improvement of to appoint any tract of land, the Lieutenant-Governor may appoint [1] any number Commisof persons, not less than seven, of whom the majority shall be qualified sioners. by being holders of lands to be affected by the works mentioned in the said scheme and plans, or managers on behalf of such holders, to be Drainage Commissioners for carrying out the provisions of this Act;

and the Lieutenant-Governor may, from time to time, remove or accept the resignation of any such Commissioner, or may add to the number of the Commissioners, and may appoint another person in the place of any such Commissioner dying, resigning, being removed or ceasing to reside in the district in which such lands are situate, but so as that the majority of the Commissioners shall always be persons qualified as aforesaid.

No act done or proceeding taken by the Commissioners shall be invalid merely on the ground that at the time of doing such act or of

^[1] For a list of appointments made under s. 4, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

⁶ L. D.

(Secs. 5-9.)

taking such proceeding the majority of the Commissioners were not persons qualified as aforesaid.

Lieutenant. Governor to appoint Chairman

5. The Lieutenant-Governor shall from time to time appoint[1] one of the persons so appointed Commissioners as aforesaid to be Chairman of the Commissioners, and may at any time, if he see fit, revoke such appointment and appoint another of such persons to be Chairman.

Commissioners may sue and be sued in his name. Meetings of Commissioners and quorum.

The Commissioners may sue and be sued in the name of their Chairman.

6. The Commissioners shall ordinarily meet for the transaction of business once at least in every quarter.

Such meeting shall be held upon such day and at such hour as the Commissioners shall from time to time determine.

No business shall be transacted at any meeting unless at least three members are present at the commencement and close of such business.

Extraordinary meetings.

- 7. The Chairman of the Commissioners may, whenever he thinks fit, and shall, upon request made in writing by three of the Commissioners, call an extraordinary meeting of the Commissioners.
- 8. The Chairman shall preside at every meeting of the Commis-Presidency of meetings. sioners; but, in case of his absence at the time appointed for holding a meeting, the Commissioners present may choose one of their number to be President of such meeting.

Transaction

9. (1) All questions at any meeting, including the question of of business adjourning such meeting, shall be decided by a majority of votes of the at meetings. members present. In case of an equality of votes the President for the time being of such meeting shall have a second or casting vote.

Delegation

(2) The Commissioners may delegate any of their powers to of powers to Committees consisting of such member or members of the body as they Committee. think fit. Any Committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the Commissioners.

Election of Chairman of Committee.

(3) A Committee may elect a Chairman at their meetings. If no Chairman is elected, or if he is not present at the time appointed for holding any meeting, the members present shall choose one of their number to be Chairman of the same.

Adjournment. voting, etc., of Committee.

(4) A Committee may meet and adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes the Chairman shall have a second or casting vote.

^[1] For a list of appointments made under s. 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 10-14.)

10. The Chairman of the Commissioners may, by an order in writing, Power to appoint and dismiss such servants and officers, other than engineers and appoint their subordinates, as may be required for the purposes of this Act; and he may control them as he shall see fit.

There shall be paid to such servants and officers, respectively, such salaries as may appear to the Commissioners to be proper.

11. The Lieutenant-Governor may, when satisfied that the objects When of their appointment have been fulfilled, direct that the powers and of their functions of the Commissioners shall cease.

appointment fulfilled. Lieutenant-Governor may direct Commissioners' powers and function to cease.

PART II.

DRAINAGE SCHEME.

12. The Commissioners shall, within three months after their Commisappointment, cause a notification, in the language of the district, to be sioners to published by beat of drum in every village in which may be situate any fication of portion of the lands to be affected by the works proposed in such scheme the scheme and plans.

to be published.

Every such notification shall be in the form in Schedule A hereto annexed, and shall further be published by posting the same at the office of the Collector and of the Subdivisional Officer, and in some conspicuous part of the village aforesaid, and at the Court of the Munsif within whose jurisdiction, and at the thana within the limits of which, such village is situate.

13. After the date named in such notification a list of the persons List of who may have given their assent or made any objection in writing in persons accordance with such notification shall be prepared and published, in the objecting manner provided in section 12, for the information of all concerned.

to be published.

Such list shall contain a specification of the land in respect of which such persons claim to vote as landholders, and of the titles in virtue of which they claim to vote, respectively; and there shall be appended thereto a notice that objections to the right of voting so claimed must be lodged with the Commissioners within one month after the publication of the said list.

14. (1) The Commissioners may, at some meeting to be held not Commisless than one month after such list has been published under the provisions of section 13, proceed to ascertain whether the holders of half of the ascertain lands to be reclaimed or improved have assented in writing to the what adoption of the scheme.

ĥave assented.

For the purpose of so ascertaining, the Commissioners shall take into account the vote of not more than one landholder in respect of any

(Secs. 15-16.)

one portion of the area affected; and, whenever more than one landholder shall have given his vote in respect of the same portion of such area, the Commissioners shall take into account the vote of the landholder who holds the lowest interest in respect of such area, and shall not take into account in respect of such area the vote of any superior landholder who may have voted.

Example-

A gives his vote as proprietor of 5,000 bighas;
B, as patnidar of 2,000 bighas included in A's proprietary of 5,000 bighas;
C, as mukarraridar of 100 bighas included in B's patni;
D, as holding a permanent jama of 500 bighas included in A's proprietary of 5,000 bighas; but not in B's patni of 2,000 bighas; the Commissioner shall take into account the votes of the respective landholders in respect of the following areas :-

O.	OLIG	TOTTOWING	ar oup t-				E	Righas.
	for	•••	•••	•••	•••		•••	500
	for		***	•••	•••	•••	•••	100
		(2,000		•••	•••	•••	***	
A	for	(5,000	2,000 500=)	•••	•••	•••	•••	2,500
					Total		•••	5,000

Vote for estate, tenure, etc., held by two or more co-sharers.

(2) One vote only shall be allowed in respect of an estate, tenure or under-tenure belonging to two or more co-sharers.

In order to ascertain whether this vote shall be taken as assenting or objecting to the adoption of the scheme, regard shall be had to the votes of the co-sharers individually, and account shall be taken of those only who actually vote.

If the majority assent, a vote of assent shall be deemed to have been given in respect of the estate, tenure or under-tenure.

If the majority object, a vote of objection shall be deemed to have been given.

If the number assenting and the number objecting are equal, no vote shall be deemed to have been given in respect of such estate, tenure or under-tenure.

Persons voting to specify the extent of their lands.

15. The Commissioners may, in their discretion, refuse to take into account the vote of any person who, after being required to do so, fails to specify the extent of land held by him and the nature of the interest which he has in such land.

Commissioners to decide who is entitled to vote.

16. (1) Whenever the right of any person to vote as a holder of any land shall be disputed, the Commissioners shall determine whether the vote of such person shall or shall not be accepted in respect of such land; and their determination shall be final for the purposes of section 17:

Provided that any "recorded proprietor," as defined by section 3 of the Land Registration Act, 1876, [1] shall be entitled to vote in respect Ben Act 7 of any property of which he is the recorded proprietor.

1870.

^[1] Printed, ante, p. 239.

(Secs. 17-20.)

(2) In the case of a landholder who is a proprietor disqualified to Vote for manage his own property under the provisions of the Court of Wards Act, property held by a Ben. Act 9 1879[1] or any similar law for the time being in force, or who is a minor minor or of 1879. or a lunatic, the right to vote shall be exercised by any manager of the lunatic. property of such disqualified proprietor or minor or lunatic, appointed by the Court of Wards, or by the Civil Court under the provisions of any law for the time being in force, or, where no such manager has been appointed, by any person who, in the opinion of the Commissioners, duly represents the interests of such minor or lunatic.

(3) Where the holder of any land cannot be found, such land shall Case of be altogether excluded in any computation that may be made in order to not found. determine whether the landholders of not less than half of the area to be reclaimed or improved have assented to the adoption of the scheme.

17. If the landholders of not less than half of the area to be reclaimed If half of or improved, ascertained as above provided, shall have assented to the landholders adoption of the scheme, and not otherwise, the Commissioners shall missioners proceed to consider such scheme, together with the plans and estimates to consider for carrying out the same, and shall further consider such objections the scheme as have been made thereto; and may adopt such schemes, plans and estimates, or may alter and modify the same, and adopt the scheme, plans and estimates so altered or modified, or may disapprove or reject the same.

18. If the landholders of half of the area to be reclaimed and Power to improved do not assent to such scheme, but the landholders of half the proceed area to be affected by some portion of such scheme assent thereto, the portion of Commissioners may re-submit such portion of the scheme to the scheme. Lieutenant-Governor, and may, with his approval, proceed thereupon in manner aforesaid.

19. If the Commissioners adopt such scheme, plans and estimates, Scheme or any modification or alteration thereof, they shall, within one month Commisafter such scheme, plans and estimates, or some modification or altera-sioners to tion thereof, have been adopted by them, cause the same to be laid be laid before the Lieutenant-Governor;

before the Lieutenant-

and the Lieutenant-Governor may sanction the scheme, plans and Governor. estimates so adopted, or any portion thereof, as to him shall seem fit.

modify it.

20. (1) The Commissioners may, with the previous assent of the Power to Lieutenant-Governor, at any time re-consider any scheme, plans or scheme and estimates adopted by them, and add to, alter or modify the same;

and, when any addition, alteration or modification has been adopted by them, they shall cause the same to be laid before the Lieutenant-Governor.

(Secs. 21-23.)

The Lieutenant-Governor may sanction such addition, alteration or modification, or any portion thereof, as he may think fit;

and, thenceforth the provisions of this Act shall apply to such addition, alteration or modification as if it had been a portion of the original scheme, plans or estimates; and every such addition, alteration or modification, after it has been adopted, shall be published by the Commissioners as to them shall seem fit.

No such addition, alteration or modification shall be adopted at a meeting at which the majority of the members present are not qualified as provided by section 4.

Publication of modified scheme.

(2) No addition, alteration or modification, under clause (1), to or of any scheme which affects any lands other than those which would be affected by some scheme theretofore published, shall be adopted by the Commissioners until the same has been published, for not less than fifteen days, according to the provisions of section 12, in every village in which may be situate any portion of the lands to be affected by such addition, alteration or modification;

nor shall any such addition, alteration or modification be adopted unless the landholders of not less than half the entire area to be affected by the scheme as so added to, altered or modified, assent to the same.

tower for the acquisition of land. 21. When the Lieutenant-Governor has sanctioned any scheme, plans and estimates as aforesaid, or some portion thereof, he may direct proceedings to be taken under the provisions of the Land Acquisition Act, 1870, or any other law[1] for the time being in force for the acquisi- 10 of 1870 tion of land for public purposes, in order to obtain any land likely to be required for the works mentioned in such sanctioned scheme, plans and estimates, or any portion thereof.

Lieutenant-Governor may order scheme to be carried out. 22. The Lieutenant-Governor may, if he thinks fit, order the works specified in such sanctioned scheme, plans and estimates, or portion thereof, to be executed by an officer to be thereunto appointed by the Lieutenant-Governor;

and may, subject to the sanction of the Governor General of India in Council, order the advance from the public funds of such sum of money as may be required for the purpose of making such improvements:

and such officer may cause the works specified in such scheme and plans to be executed, and for that purpose may by himself, his agents and workmen enter into or upon any lands and perform such works thereupon as may be required.

Power to Lieutenant-Governor to modify scheme. 23. The Lieutenant-Governor may, at any time after the said works have been commenced, by an order sanction any alteration or modification

^[1] See now the Land Acquisition Act, 1894 (1 of 1894), which repeals and re-enacts the Act of 1870. The Act of 1894 is printed in the General Acts, 1887-97, Ed. 1928, p. 216.

(Sec. 24.)

of such scheme or plans suggested to him by the officer in charge of such works, if after communication with the Commissioners it shall appear to him that by such alteration or modification the general character and scope of the scheme will not be altered, nor greater expenditure incurred thereon than would be incurred in the scheme as originally sanctioned:

and, after such sanction, such alteration or modification shall be taken to be a portion of the scheme adopted by the Commissioners, in substitution for the portion of such scheme thereby altered;

and every such alteration or modification shall be published by the Commissioners as to them shall seem fit.

24. (1) Any person who alleges that damage has been caused to Claims to his property by any scheme or works commenced or carried out under this compensa-Act may, at any time before the expiry of the three years mentioned in damage clause (1) of section 28, prefer to the Commissioners a claim for compen-carrying out sation in respect of such damage actually caused, and of all future damage scheme or likely to be caused, to such property by such scheme or works.

The Commissioners shall duly consider any such claim; and, if they Compensaare satisfied that such damage has been caused or is likely to be caused, assessed by they shall assess such compensation as to them appears fair and the Comreasonable.

missioners.

If such person agrees to accept the amount so assessed, the same shall be paid to him.

If he do not agree to accept such amount, the Commissioners shall Reference to make a reference to the Civil Court in the manner in which a Collector Civil Court if amount is empowered to make a reference by section 15 of the Land Acquisition assessed be Act, 1870[1] and the provisions of Part III of the said Act shall apply not accepted. to any reference so made.

10 of 1870.

(2) When the persons interested in such property, to which damage Reference to has been caused as aforesaid, agree to accept the amount of compensation Civil Court assessed by the Commissioners, but a dispute arises as to the apportion- amount of ment of the same or any part thereof,

or when the amount of compensation has been settled by the Court agreed on a reference under clause (1) of this section, and a similar dispute by Court, arises,

the Commissioners shall refer such dispute to the decision of the apportion-Civil Court:

compensation to or settled but dispute as to its

^[1] These references to Act 10 of 1870 should now be construed as references to the corresponding portions of the Land Acquisition Act, 1894 (1 of 1894)-see s. 2 (3) of the latter Act, in the General Acts, 1887-97, Ed. 1928, p. 217.

(Secs. 25-27.)

and the provisions of Part IV of the said Land Acquisition Act[1] 10 of 1870. shall apply to any reference so made.

Reference tain cases be transferred to Subordinate Judge or Munsif for disposal.

(3) When the amount of compensation assessed by the Commismay in cer- sioners does not exceed one thousand rupees, any reference made under the said clause (1) may be transferred by the principal Civil Court of original jurisdiction of the district to any Subordinate Judge in the same district; and such Subordinate Judge shall have power to hear and dispose of the same;

> and any reference made under clause (2) of this section may be transferred by such principal Civil Court to any Munsif in the same district, and such Munsif shall have power to hear and dispose of the same.

PART III.

EXPENDITURE AND APPORTIONMENT.

Cost of com. pensation, etc., to be of expense of construction. Such expense may be defraved by advances from the public funds. Interest to

25. All amounts paid as compensation for any lands taken for the purposes of this Act, or for damage inflicted in carrying out any scheme deemed part or works under this Act, or as salaries of officers, servants or establishments, or for surveys or valuations (whether antecedent or subsequent to the preparation of the scheme and plans), and all amounts otherwise duly expended in carrying out the purposes of this Act, shall be included in, and deemed to constitute the cost of, construction of the works, and may be defrayed by advances from the public funds as provided by section 22.

be charged on such advances.

[2]26. Interest shall be charged on all such advances until the same have been recovered.

Rate of interest. and barring of compound interest.

[2] 26A. (1) In every case in which the charging of interest is authorized by this Act, the rate chargeable shall be four per centum per annum.

(2) No compound interest shall be charged in any case.

Explanation.—The interest recoverable from a tenant under section 42, clause (b), section 43, clause (b), section 44 or section 44A shall not be deemed to be "compound interest" within the meaning of this section although it includes simple interest upon interest which has been paid by a landholder or superior tenant in pursuance of this

Reports to be made and expenditure certified.

27. The officer in charge of the said works shall, until the same shall be finally completed, once in every three months make a detailed report to the Commissioners of the progress of such works and the

[2] The ss. 26 and 26A were substituted for the original s. 26 by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 3, post, p. 715,

^[1] The references to Act 10 of 1870 should now be construed as references to the corresponding portions of the Land Acquisition Act, 1894 (1 of 1894)-see s. 2 (3) of the latter Act, in the General Acts, 1887-97, Ed. 1928, p. 217.

(Secs. 28-29.)

expenditure thereupon from the day up to which the next preceding report shall have been brought down;

and the Examiner of Public Works Accounts to the Government of Bengal, or some other officer authorized in that behalf by the Lieutenant-Governor, shall from time to time certify the sums advanced in accordance with the provisions of section 25, and the dates of such advances:

and every such certificate shall be final and conclusive evidence in a Civil Court, or in any proceedings under this Act, of the sums therein stated to have been advanced having been so advanced, and of the dates upon which they were respectively so advanced.

28. (1) The officer in charge of the works shall, as soon as they have Commisbeen completed, certify such completion to the Commissioners;

and the Commissioners shall, upon the expiry of three years from three years from completion being so contifed to the completion being so continued to the completion being so contifed to the completion being so continued to the continued to the completion being so continued to the completion being so continued to the con such completion being so certified to them, proceed to classify all the tion report lands benefited by the works according to the degree of benefit conferred; to classify and in such classification they shall distinguish the improved lands from benefited by the reclaimed lands.

It shall be lawful for the Commissioners at any time during such improved three years to make such inspections of the lands, and such surveys lands and thereof, and otherwise to collect such information, as shall in their lands. opinion conduce to the making of such classification and of the apportionment hereinafter mentioned.

- (2) The Commissioners shall, after making such classification, Cost of proceed further to apportion the total cost of construction, together with construction, [interest][1] upon the improved lands and reclaimed lands, and shall draw interest, to up a statement showing the amount payable to the Collector by each be apportioned upon landholder---
 - (a) in respect of his improved lands, if any, and
 - (b) in respect of his reclaimed lands, if any.

In making this apportionment the Commissioners shall, as far as Amount paymay be possible, make payable in respect of each plot or field of improved improved improved land a sum not exceeding the amount of the increased capitalized value lands not to which, in the opinion of the Commissioners, has been conferred on such of improveland by the works.

29. (Adjustment of excess or deficient payments of interest.) Rep. by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), e. 5.

sioners upon expiry of the works, distinguishing between

the improved lands and reclaimed lands.

^[1] The word "interest" in s. 28 (2) was substituted for the words and figures "the interest mentioned in s. 26" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 4, post, p. 715.

(Secs. 30-33.)

When the land is part of a tenure, etc., Commissioners who shall be deemed liable as landholders.

30. Whenever any land, in respect of which any sum is apportioned as payable under the provisions of section * *[1] 28, forms part of a tenure, and of a tenure and of an under-tenure, it shall be lawful for may declare the Commissioners to declare whether the holders of the estate, of the tenure or of the under-tenure shall be deemed to be the landholders liable to pay to the Collector the sum apportioned as payable in respect of such land.

Amounts made payable to be a lands and reclaimed lands, respectively. Secretary of State Council to have a per-petual lien

for their recovery.

Commissioners to

tionment.

31. The total sum so made payable in respect of the improved land of any one landholder, and the total sum so made payable in respect of charge upon the reclaimed lands of any one landholder with interest * * * *[2] the improved from the date of apportionment, *[3] shall be a first charge upon such improved lands and upon such reclaimed lands respectively.

Such charge shall not be avoided by the sale of such lands or of any estate, tenure or under-tenure within which they are included, for for India in arrears of revenue or rent.

32. The Commissioners shall, so soon as conveniently may be after having apportioned the sums to be payable by the holders of the lands report apporof any village respectively, make and publish a report describing the several lands in respect of which they have declared such sums to be payable, the names of the respective holders thereof who have been made liable to pay the same to the Collector, and the sum payable by each in respect of the same.

Every such report shall distinguish between the reclaimed lands and the improved lands, and shall classify the latter according to the extent of the improvement.

A copy of such report shall be sent through the Collector to the Commissioner of the Division, for confirmation by such Commissioner.

In default of Commissioners, officer appointed by Lieutenant-Governor to make apporreport.

33. If the Commissioners shall, for the space of three months after the completion of the entire works has been certified to them as aforesaid, neglect or refuse to proceed with the apportionment of the sums payable as aforesaid, or to make such report as aforesaid,

or, for the space of two months after any report and apportionment tionment and shall have been returned to them for further consideration and revision

[2] The words "upon such sums at five per centum per annum," in s. 31 were repealed by ibid.

^[1] The figures and word "26 or," in s. 30 were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, post, p. 715.

^[3] The words and figures "and any interest payable under s. 29, and any interest payable under clause (1) of s. 26, but not paid or recovered before the apportionment under s. 28," in s. 31 were repealed by ibid.

(Secs. 34-35.)

under the provisions hereinafter contained, neglect or refuse to proceed to such further consideration and revision as is required,

the Collector may serve them with a notice requiring them to proceed as aforesaid;

and, if for one month after service of such notice they neglect so to proceed, the Lieutenant-Governor may appoint such officer or officers as to him shall seem fit, to make or consider and revise such apportionment and report, and to do all or any of the subsequent acts which the Commissioners are hereby required or empowered to do in respect of such apportionment and report;

and every apportionment and report so made or revised, and every such act so done, shall have the same force and effect as if the same had been made, revised or done by the Commissioners.

34. Whenever any apportionment and report have been made in Reports pursuance of the provisions hereinbefore contained, the Commissioners to be shall cause such report to be published by affixing in every village in published. which any lands mentioned therein are situate a copy of so much thereof as relates to such lands, and also a like copy at the office of the Collector and of the Subdivisional Officer, and at every Munsif's Court within whose jurisdiction, and at every police-thana within the limits of which, such village, or any part thereof, is situate.

The fact of such apportionment and report having been made, and such copies having been affixed, shall also be notified by beat of drum in every such village.

35. Any person who may deem himself to be aggrieved by any such Appeal apportionment may, within one month after such report has been against published, prefer an objection before the Commissioners, and the apportionment. Commissioners shall be bound to inquire into and decide upon such objection:

and any person who is dissatisfied with such decision may, within one month from the date of such decision, appeal to the Commissioner of the Division against such apportionment;

and such Commissioner shall cause notice of the day fixed for the tearing of such appeal to be published by affixing the same in the office of the Collector and of the Subdivisional Officer and in a conspicuous place in every village, and in the Court of every Munsif within whose jurisdiction, and at every police-thana within the limits of which, any of the lands mentioned in such report are situate.

Such Commissioner shall hear such appeal and the objections thereto of all persons interested, and may confirm such apportionment, or may revise and alter the same as to him shall seem fit, or may return the same to the Commissioners for further consideration and revision:

(Secs. 36-36A.)

Provided that the total sum apportioned by every apportionment and report so revised and altered, as payable in respect of all the lands improved or reclaimed by the works shall not be less than the total cost of the construction of such works within the meaning of section 25.

Every such apportionment and report, when revised or altered, shall, so far as the same has been altered, be published, and be liable to appeal, in like manner as the original apportionment and report.

The decision of the Commissioner of the Division upon any appeal

under this section shall be final.

Final determination of apportionment. **36.** Whenever the Commissioner of the Division shall confirm any apportionment and report, or whenever one month shall have elapsed from the publication of any report without any appeal therefrom having been preferred,

he shall pass an order declaring the sums payable in respect of the lands respectively and the persons liable to pay the same to be determined, and shall cause such order to be published in such manner as to him shall seem fit.

[1] **36A.** (1) If any order passed under section 36, so far as it declares what persons are liable to pay any sum under this Act in respect of any land, appears at any time to require revision,—

(a) by reason of the omission of the name of any co-sharer of such land, or

- (b) by reason of any change having taken place in the ownership or joint ownership of such land, or
- (c) for any other substantial reason,

the Collector may, on the application of any holder of the land, or of his own motion, and after such inquiry and upon such conditions (if any) as he may think proper, add to or alter such order:

Provided that every person whose name is so added or who is materially affected by any such alteration has had an opportunity of being heard by the Collector.

- (2) Any person who is dissatisfied with any addition or alteration made under sub-section (1) may, within one month after the same was made, appeal to the Commissioner of the Division.
- (3) The Commissioner shall cause notice of the day fixed for the hearing of such appeal to be published in the manner prescribed by section 35; and shall, on the day so fixed, hear such appeal and all objections thereto advanced by persons interested and may confirm or revise the addition or alteration, or may remit the case to the Collector for further consideration and revision.

Power to add to, or alter, declaration as to names of persons liable to

pay.

^[1] Section 36A was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 6, post, p. 716.

(Secs. 37-38.)

- (4) The decision of the Commissioner on any such appeal shall be final.
- (5) Every addition and alteration made under this section shall be published, in such manner as to the Collector may seem fit, after the expiration of one month—
 - (i) from the time when the addition or alteration was made, or

(ii) if any appeal has been preferred under sub-section (2), from the decision of the appeal;

and the addition or alteration shall take effect from the date of such publication; and proceedings may thereupon be taken under this Act, in respect of such addition or alteration, as if a new order embodying it had been made under section 36.

PART IV.

RECOVERY OF SUMS DUE TO THE COLLECTOR.

37. As soon as any apportionment has been determined as aforesaid, Collector to serve notice the Collector may cause a notice in the form in Schedule B hereto annex- of apportioned to be served upon any landholder who has not paid the sum payable ment, requiring by him.

payment or

Such notice shall require such landholder, within one month from engagement to pay. the date of [1] [the service thereof] upon him, to pay such sum, with interest[2] [up to the day of payment,] or to enter into an engagement for the payment, by instalments extending over a period of not more than ten years, of such sum, together with interest instalments remaining unpaid at the date of such payment.

38. If any landholder fails to discharge the sum made payable in If amount not respect of his improved lands or in respect of his reclaimed lands, or discharged, fails to enter into an engagement for the payment thereof as in this Act the Collector may recover hereafter provided, or, having entered into such an engagement, fails it as a to discharge any instalment payable thereunder, such sum or such in-public demand. stalment, together with interest * * *,[4] shall be recoverable under the provisions of any law[5] for the time being in force for the recovery of public demands.

by ibid, s. 5, and are omitted.

[5] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

^[1] The words "the service thereof," in s. 37, were substituted for the words "its post, p. 716.

[2] The words "up to the day of payment," in s. 37, were substituted for the words "its service" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 7 (1), post, p. 716.

[2] The words "up to the day of payment," in s. 37, were substituted for the words "at the rate of five per centum per annum" by ibid.

[3] The words "at the said rate," in s. 37, were repealed by ibid, s. 7 (2).

[4] The words "thereupon at five per centum per annum," in s. 38, were repealed by ibid, s. 7 (2).

(Secs. 39-41A.)

Collector may also with sanction of Board of Revenue amount by leasing or mortgaging the improved or reclaimed

lands.

- 39. If the Collector thinks it inexpedient to proceed under the provisions of section 38, or, having so proceeded shall have failed to realize the sum due, he may, with the sanction of the [1] [Commissioner of the Division] raise the amount necessary to discharge the sum or raise unpaid instalment remaining unpaid-
 - (a) by letting in perpetuity or for a term, on payment of a premium equivalent to such amount, the whole or any part of such improved land or reclaimed lands;
 - (b) by mortgaging the whole or any part of such improved lands or reclaimed lands:
 - (c) by letting in farm or managing by himself or another the whole or any part of such improved lands or reclaimed lands: or
 - (d) partly by one of such modes and partly by another or others of them.

For the purposes of this section, the Collector may exercise all the powers of the owner of such improved or reclaimed lands; and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

Recovery of unrealised portion of charge.

40. In case the Collector certifies that any sum payable as hereinbefore provided cannot be realized as provided by section 38 or 39, so much of such sum as shall not have been so realized shall be a charge upon any profits that may accrue from the property vested in Collector under the provisions of section 47.

Power to repay advances.

41. Any landholder who has entered into an engagement for the repayment of any sum apportioned as aforesaid may at any time repay to the Collector the entire amount of the principal sum which shall be then remaining due, and interest thereupon up to the day of payment; and thenceforth the said engagement shall be terminated, and all liabilities in respect thereof for principal or interest shall determine.

[2]PART IV-A.

RECOVERY OF SHARE OF PAYMENTS FROM CO-SHARERS.

Power to recover share of payments from co-sharers.

41A. When any landholder has made any payment under the foregoing provisions of this Act in respect of land which he holds jointly

^[1] The words in square brackets were substituted for the words "Board of Revenue "by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch. Pt. II—see Vol. III of this Code.

^[2] Part IV-A was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 8, post, p. 716.

6 of 1885.

(Sec. 42.)

with other persons, and such payment exceeds the amount which is proportionate to his individual interest in the land, he may-

- (a) recover from his co-sharers, respectively, such contributions towards such payment as are proportionate to their individual interests in the land, either-
 - (i) in the same manner in which arrears of rent are recoverable under the Bengal Tenancy Act, 1885,[1] and under similar penalties, or
 - (ii) if such co-sharers have been declared by any order passed under section 36 or revised under section 36A to be liable to pay—upon application to the Collector as hereinafter provided; or
- (b) take credit for such contributions as aforesaid in any adjustment of accounts between himself and his co-sharers.

PART V.

RECOVERY BY LANDHOLDERS OR SUPERIOR TENANTS OF THE COST OF THE WORKS FROM PERSONS HOLDING LAND UNDER THEM.

42. Every landholder who has been charged with any sum by a Proprietor report published as aforesaid may, after he has paid or engaged to pay may the same,—

recover from subordinate

- (a) proceed under any law for the time being in force to enhance the tenants. rents of any person holding immediately from him any land the productive powers of which have been increased by any works carried out under this Act: provided that any such person may at his option elect to pay under clause (b) of this section; or
- (b) recover such sum or any part thereof, according to the proportions hereinafter provided, with interest * * *[2] from the date of payment by him of any portion thereof, from the persons holding immediately from him lands in respect of which such sum has been declared payable, and which have been benefited by any scheme or works carried out under this Act.
- (c) The sum recoverable by such landholder from each such person under clause (b) in respect of the lands of each class shall bear the same proportion to the sum charged upon such landholder in respect of all lands of that class as the area of the lands of that class which are held by such person bears to the area of the lands of the same class in respect

^[1] Printed in Vol. I of this Code.
[2] The words "at the rate of five per centum per annum," in s. 42 (b) were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5.

(Secs. 43-44.)

of which the landholder has been charged. No person from whom a landholder is authorized to recover any sum under this section shall be liable to pay in any one year more than one-tenth part of the total sum so recoverable from him, and no person shall be liable to pay in one year more than the increased annual value of the lands in respect of which the payment is made.

Recovery by superior tenant.

- 43. Any superior tenant, who has made any payment to a land-holder under the provisions of clause (b) of section 42, may—
 - (a) proceed under any law for the time being in force to enhance the rents of any person holding directly from him lands the productive powers of which have been increased by any works carried out under this Act: provided that any such person may at his option elect to pay under clause (b) of this section; or
 - (b) recover the sum or part of the sum which has been so paid by him according to the proportions and subject to the rules laid down in clause (c) of section 42, with interest * * *[1] from the date of payment by him of any portion thereof, from the persons holding directly from him lands in respect of which the payment has been made, and which have been benefited by any scheme or works

Mode and time of payment. 44. (1) The sum payable to a landholder or superior tenant in any one year under clause (b) of section 42 or under clause (b) of section 43 shall be payable by equal instalments upon the days appointed for the payment to such landholder or superior tenant of the rent of the lands concerned, and shall be recoverable as if the same were an arrear of rent.

carried out under this Act.

Provision in case of dispute as to the amount to be paid.

(2) If such landholder or superior tenant and any person holding lands directly from him cannot agree as to the amount which such person shall pay, such landholder or superior tenant may serve such person, through the Collector, with a notice setting forth the amount which he claims, and requiring such person, within one month after the service of such notice, to pay the amount claimed or enter into an engagement for the payment thereof by instalments extending over a period of not more than ten years, or appear before the Collector and object.

Collector to decide objections.

(3) If such person do not within the said period of one month appear and object, the amount set forth in such notice shall be recoverable, with interest * * *.[2]

^[1] The words "at the rate of five per centum per annum," in s. 43 (b) were repealed by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 5, post, p. 715.

^[2] The words "at five per centum per annum," in s. 44(3), were repealed by ibid.

(Secs. 44A-44B.)

If such person appear and object, the Collector shall dispose of such objection, and his decision shall be final.

The Collector may direct that any sum of money payable under his decision, together with any cost awarded by him, be paid by instalments extending over a period of not more than ten years.

The provisions of clause (1) of this section shall apply to every sum payable according to an order of the Collector passed under this section.

[1]44A. (1) If any landholder or superior tenant has made any pay-Recovery, ment under the foregoing provisions of this Act in respect of lands which under the are or were held by tenants immediately from him, and which have been certificate procedure, benefited by any scheme or works carried out under this Act,

and if he has not enhanced the rent of such tenants under section made in respect of 42, clause (a), or section 43, clause (a), or recovered under section 42, land held clause (b), section 43, clause (b), or section 44 the sums due to him, by tenants.

he may, upon application to the Collector as hereinafter provided, but subject to the provisions of sub-section (1) of section 44 as to instalments, recover from such tenants such sums as he may be entitled to according to the proportion and under the rules laid down in clause (c) of section 42, with interest from the date of such payment.

- (2) An application in respect of a payment may be made under this section by a landholder who was declared by an order passed under section 36 to be liable to make such payment, although his name has been removed, by an order made under section 36A, from the list of persons declared liable to make payments.
- (3) If any tenants referred to in sub-section (1) have transferred their tenancies, the sums referred to in that sub-section may be recovered thereunder--
 - (a) from the said tenants for the period during which they occupied the benefited land since the carrying out of the said scheme or works, or
 - (b) from the tenants in possession.

[1]44B. Notwithstanding anything hereinbefore contained, no sum Bar to shall be recoverable under section 42, clause (b), section 43, clause (b), recovery of section 44 or section 44A, in respect of any lands which have been bene-money from tenants in fited by any scheme or works carried out under this Act, when, in certain consequence of such scheme or works—

- (a) the rent of such lands has been increased, or
- (b) rent has for the first time been imposed on such lands.

^[1] Sections 44A and 44B were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 9, post, p. 716.

⁶ L. D.

(Secs. 45-48.)

Proviso.

45. No person from whom any sum has been recovered under clause (b) of section 42 or under clause (b) of section 43[1] [or under section 44A] shall be subject to any claim for enhanced rent on account of the benefit caused by the works to his lands.

PART VI.

MISCELLANEOUS.

Drainage works to be subject to the laws relating to embankments.

46. All outlets and water-channels, natural or artificial, which shall be altered, enlarged, excavated or cut under the provisions of this Act, and the construction and maintenance of embankments and of dams and works therein or connected therewith, shall, save as hereinafter provided, be subject to the law[2] for the time being in force regulating the construction and maintenance of public embankments and public rivers. channels and outlets.

Lands and works to be vested in behalf of Secretary State.

47. All lands which are taken under the provisions of this Act for the purpose of the construction of works therein or thereon, and all Collector on works constructed under the provisions of this Act, as well as all outlets, water-channels, embankments and dams so constructed, altered, enlarged, excavated or cut shall be vested in the Collector of the district for the time being, on behalf of the Secretary of State for India, in order to effectuate and maintain the objects of this Act;

> and, to assist the Collector in the management of the same, the Lieutenant-Governor may appoint, or authorize the election by the landholders aforesaid of, a Committee consisting of not less than four or more than six persons, being themselves holders of the lands reclaimed or improved.

Cost of maintenance of works.

48. (1) The expense of keeping in efficient order and repair any improvements or works effected under this Act shall be charged to the profits from the property vested in the Collector under section 47;

and, if such profits shall not suffice, the balance shall be paid to the Collector in the proportions of the original contributions by the holders for the time being of the land which have been benefited by such works:

and all sums payable to the Collector under the provisions of this section shall be recoverable in the manner provided by section 38, or in the manner provided by section 39;

^[1] The words and figures in square brackets in s. 45 were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 10, post, p. 716.
[2] Section 91 of the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), post, p. 483, declares that nothing in that Act shall apply to any embankment, land or water-course which is under the operation of the present Act.

(Secs. 49-50.)

and every proprietor or other person who has paid any such sum may recover the same, or any part of the same, in the proportion and subject to the rules laid down in section 42 or 43, as the case may be, [1] and for that purpose the procedure prescribed by section 41A or section 44A and sections 51B and 51C shall be applicable.

- (2) Any such amount as is specified in section 25 which, from over-Recovery of sight or other cause, has been omitted from the apportionment and items omitted report made under section 32 or section 33, may be charged and from recovered under the provisions of clause (1) of this section.
- (3) If, on the first day of January next before the last instalments Surplus payable under the provisions of section 36 are due, there is, after provid- property ing for the expense of keeping in efficient order and repair the improve-vested in ments and works executed under this Act, a surplus of the profits from under under the property vested in the Collector under section 47, such surplus, or section 47 as much thereof as will suffice, shall be appropriated to the liquidation priated to of the said last instalments.

Any landholder who has paid any such instalment in advance under of debt to Government. the provisions of section 41 shall be entitled to a refund in proportion with interest at $\lceil 2 \rceil$ [four] per cent. per annum.

(4) The Lieutenant-Governor may at any time, in his discretion, Cost of direct that the total average annual expense, which over and above such maintenance may be profits as aforesaid is necessary to keep such improvements and works capitalized in efficient order and repair, be estimated, and that there be levied from and the capitalized such landholders, in lieu of all future contributions to the maintenance amount of such improvements and works, such amount as, being invested in levied. Government securities at the current rate of interest, shall yield a sum equal to such average annual expense. The provisions of sections 31, 38 and 39 shall apply to such capitalized amount.

49. The Commissioners, the Commissioner of the Division, and Powers for every officer appointed by the Lieutenant-Governor under section 33, taking evidence, shall have the powers conferred on Civil Courts by the Code of Civil Procedure[3] for compelling the attendance of witnesses and the production of evidence, and for examining witnesses in any inquiry or appeal which they or he may be empowered to make or entertain under the provisions of this Act.

50. Any land held free of rent or revenue, being less than one hun-Rent-free dred standard bighas in extent, and not being a property entered on the lands may Collector's general register of revenue-free lands, may, for the purposes subordinate

apportion-

payment

^[1] The words and figures in square brackets, in s. 48 (1), were added by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 11 (1), post, p. 716.
[2] The word "four," in s. 48 (3), was substituted for the word "five", by ibid,

^[3] Act 10 of 1877 was repealed by Act 14 of 1882 which has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to the latter Code-see s. 158 thereof.

(Secs. 51-51B.)

of this Act, be deemed to form a tenure or under-tenure held immediately from some landholder; and the Commissioners shall determine who shall be deemed to be the landholder in respect of such tenure:

Provided that any holder of such land, who may deposit the cost of survey of his land at a rate to be approved by the Commissioners and calculated on the area claimed by him, shall be entitled to be deemed a landholder, in respect of such lands, within the meaning of this Act.

Sum payable by holder of rent-free land to be payable in two instalments. 51. Wherever any land, as mentioned in the last preceding section, shall be deemed to form a tenure or under-tenure held immediately from a landholder as therein provided, every sum payable to the landholder in respect of such land in any one year shall be payable in two equal instalments on such dates as the Commissioner of the Division may fix.

Such Commissioner shall cause due notice to be given in the villages concerned of the dates so fixed by him.

Recovery, under the certificate procedure of payments made in respect of land held free of rent or revenue.

[1]51A. Any person who has been determined under section 50 to be the landholder in respect of land, held free of rent or revenue, which has benefited by any scheme or works carried out under this Act, and who has made any payment under the foregoing provisions of this Act in respect of such land, may, upon application to the Collector as hereinafter provided, but subject to the provisions of section 51, recover the amount of such payment from any person holding such land immediately below him.

Further provisions as to applications under sections 41A, 44A or 51A.

- [1]51B. (1) Every application to the Collector under section 41A for the recovery of contributions from co-sharers towards a payment made by a landholder under the foregoing provisions of this Act must—
 - (a) be made within six months after such payment was made, and
 - (b) specify the amount of such payment, and the amount of such contributions due from each co-sharer.
- (2) Every application to the Collector under section 44A or section 51A for the recovery of sums due, from tenants of, or persons holding lands benefited by any scheme or works carried out under this Act, on account of any payment made by the applicant under the foregoing provisions of this Act, must—
 - (c) be made within six months after such sums became due,
 - (d) specify the amount of such payment, and the date on which it was made,

^[1] Sections 51A to 51J were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

(Sec. 51C.)

- (e) specify the amount of such sums due from each tenant or person holding land, and the date on which it became due, and
- (f) be accompanied by a declaration, signed by the applicant and stating-
 - (i) that he has not, on account of the said scheme or works, enhanced the rent, if any, payable in respect of the said lands or any of them, and
 - (ii) that he has not taken from such tenants or persons holding land, or any of them, any premium on account of such scheme or works.
- (3) Every application under section 41A, section 44A or section 51A must-
- 14 of 1882.
- (g) be signed and verified in the manner provided by sections 51 and 52 of the Code of Civil Procedure[1] for the signature and verification of plaints,
- (h) be accompanied by a court-fee of eight annas, and
- (j) request the Collector to make a certificate authorizing the recovery of the said contributions or sums, as the case may be, under the Public Demands Recovery Act, 1895.[2]

Ben. Act I of 1895. 45 of 1860.

- (4) Every declaration made under clause (f) shall, for the purposes of section 199 of the Indian Penal Code, be deemed to be a declaration which the Collector is authorized by law to receive as evidence.
- (5) If the Collector at any time has reason to believe that any declaration accompanying an application as aforesaid, or any part thereof, is false, he may reject the application and leave the applicant to pursue his claim in a Civil Court.
- [8] **510.** (1) Upon receiving any such application, the Collector may, Grant of certificate, if he thinks fit, make a certificate as aforesaid.

and effect

Ben. Act I of 1895.

(2) Every such certificate shall have the same effect as a certificate thereof. made under section 7 of the said Public Demands Recovery Act, 1895;[2] and the same notices shall be issued, and the same proceedings may be taken, with respect thereto, by the Certificate Officer, as in the case of a certificate made under that section.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rules 14 and 15 in Order VI in Sch. I to the latter Code—see s. 158 thereof.

^[2] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the corresponding portion of the latter Act see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, in Vol. III of this Code.

^[8] Section 51C was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

(Secs. 51D-51E.)

- (3) The person in whose favour any such certificate is made shall be deemed to be the decree-holder for the amount mentioned in the certificate, and the person against whom the certificate is made shall be deemed to be the judgment-debtor for the said amount; and all proceedings taken by the Certificate Officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost, and on his responsibility, and not otherwise.
- (4) If any person against whom any such certificate is made objects that the contributions or sums claimed by the person who applied for the certificate are not legally due, or exceed the sums which the applicant could recover from him in a Civil Court as being payable in respect of his individual interest in the land, and if the Certificate Officer considers there is probable ground for such objection, the Certificate Officer may modify the certificate or, if he thinks fit, cancel the certificate and leave the applicant to pursue his claim in a Civil Court.

Power of Collector to suspend

[1]51D. (1) If, in any area benefited by any scheme or works carried out under this Act, there has occurred in any year a total or serious recovery of failure of crops, then, notwithstanding anything hereinbefore contained, dues in cases of failure of the Collector may,

after such inquiry (if any) as he deems necessary, and with the previous sanction of the Commissioner of the Division.

by written order, suspend, for the whole or any part of that year, the recovery of all or any sums which are recoverable from landholders and tenants, respectively, in respect of such area under the foregoing provisions of this Act.

- (2) Every such order shall be published in the manner prescribed in section 12 for the publication of the notification referred to in that section.
- (3) When any such order has been duly published, all proceedings under the Public Demands Recovery Act, 1895[2] and all suits by land- Ben. Act 1 holders or tenants, for the recovery of any sums to which such order of 1895. relates, shall be stayed during the period specified in the order.

Bar to jurisdiction of Courts in respect of order of suspension.

[8]51E. An order duly made and published under section 51D shall not be questioned in any Civil or Revenue Court.

[1] Section 51D was inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben

General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, in Vol. III of this Code.
[3] Sections 51E to 51J were inserted by the Bengal Drainage (Amendment) Act,

1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

Act 2 of 1902), s. 12, post, p. 716.

[2] Ben. Act 1 of 1895 has been repealed and re-enacted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa

(Secs. 51F-53.)

[1]51F. If any landholder or tenant, during any period specified in Procedure an order duly made and published under section 51D, collects any sums holder or payable to him to which such order relates, then all sums payable by tenant him to which such order relates may be recovered from him as if such during order had not been made.

collects dues period of suspension.

[1]51G. When an order has been duly made and published under Extension of section 51D, suspending the recovery of any sums for any period, then, period for if such sums form part of a sum which is, in pursuance of this Act, pay-instalments, able by instalments, the period remaining for the payment of such when order of suspeninstalments shall be extended by the period specified in such order, and sion made. no more than one instalment of the sum remaining due shall be payable in any succeeding year.

[1]51H. When an order has been duly made and published under Extension of section 51D, suspending the recovery of any sums for any period, such period of limitation, period shall be excluded in computing the period of limitation prescribed when order for a suit or application for the recovery of such sums.

of suspension made.

[1]51J. When an order has been duly made and published under Interest not section 51D, suspending the recovery of any sums for any period, to accrue then notwithstanding anything hereinbefore contained, no interest shall period of accrue on such sums during such period. ".

suspension.

52. All notices under this Act required to be served, may be served Service of by delivering the same to the person to be served or by posting the same upon the door of his dwelling-house, or, if such person cannot be found and his dwelling-house is not known, then by posting the same on some conspicuous part of the land to which such notice relates, and copies thereof at the Munsif's Court within whose jurisdiction, and the policethana within the limits of which, such land is situate.

53. No proceeding under this Act shall be defeated or invalidated Proceedings by reason of any defect in the number or property of assenting land-invalidated holders, nor by any defect or omission in the publication or service of by formal any notification, notice or order, unless material injury is done to any person by such defect or omission;

and every order and report of the Commissioners, of the Collector and of any officer appointed by the Lieutenant-Governor under section 33 shall be conclusive evidence that all notifications and notices hereby required as preliminary thereto had been duly published and served, and that all other preliminaries thereunto had been duly performed, and, save as is hereinbefore provided, shall be final and conclusive.

^[1] Sections 51F to 51J were inserted by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 12, post, p. 716.

(Secs. 54-58.)

Portion of scheme may be deemed separate scheme.

54. The Lieutenant-Governor may, by an order in writing, direct that any portion of a scheme adopted and ordered to be executed under this Act shall, for the purposes of this Act or for any such purposes, be deemed to be a separate scheme.

Lieutenant-Governor may empower other person to act for Collector.

55. The Lieutenant-Governor may specially empower any person to do all or any acts, to discharge all or any functions, and to exercise all or any powers which may be done, discharged or exercised by a Collector under this Act;

and, on any person being so specially empowered, such person may do all or any of such acts, discharge all or any of such functions, and exercise all or any of such powers, and such person shall be deemed to be the Collector for the purposes of the scheme in respect of which he is so especially empowered.

Collector may delegate authority.

56. The Collector may, with the sanction of the Commissioner of the Division, delegate to any Deputy, Assistant or Sub-Deputy Collector, or to any similar officer, the performance of any acts and the discharge of any functions which the said Collector may perform or discharge under this Act;

and upon such delegation such Deputy Collector or other officer may do any such acts and discharge any such functions, and may exercise any powers for the performance of the same which the Collector may exercise under this Act:

Provided that all acts done, functions discharged and powers exercised by such officer shall be done, discharged or exercised subject to the control and supervision of the Collector.

Control of Commissioner. 57. Notwithstanding anything hereinbefore contained, all the proceedings of the Commissioners and of the Collector under this Act shall be subject to the general control and supervision of the Commissioner of the Division.

Power to make, alter and cancel rules.

- **58.** The Lieutenant-Governor may, from time to time, make rules[1] to regulate the following matters:—
 - (a) the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;
 - (b) the person by whom, the time, place or manner at or in which anything for the doing of which provision is made in this Act shall be done;
 - (c) and generally to carry out the provisions in this Act.

The Lieutenant-Governor may from time to time alter or cancel any rules so made.

Publication of rules.

Such rules, alterations and cancelment shall be published in the Calcutta Gazette, and shall thereupon have the force of law.

^[1] For rules made under s. 58, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 59-63, Sch. A.)

PART VII.

Special provisions for works carried out under Bengal Act 5 of 1871. [1]

- 59. The following portions of this Act shall apply to any scheme or Portions of work carried out under the provisions of Bengal Act 5 of 1871,[1] that applicable to works carried
 - (a) as to the method of realizing sums due on account of the cost out under of the works—sections 31, 38, 39 and 40;

 Bengal Act 5 of 1871.
 - (b) as to the recovery by landholders or superior tenants of the cost of the works from persons holding land under them— Part V:
 - (c) as to other matters—Part VI.
- **60 to 63.** (Revision of apportionment of cost of scheme or works carried out under Bengal Act 5 of 1871; Commissioners to be guided in making such revision by certain provisions of this Act; Power of Commissioners to increase or reduce apportionment; Appeal; Finality of revised apportionment; Realization of sums due thereunder.) Rep. by the Amending Act 1903 (1 of 1903).

Schedule A (referred to in section 12).

BENGAL DRAINAGE ACT, 1880.

To all whom it may concern.

Take notice that it is proposed to drain and improve certain lands in the village of , pargana . Plans and provisional estimates of the works proposed are now lodged in and may be inspected by any person interested on any of the days and at any of the times specified below till the day of next. (Here specify the days and hours at which the plans and the estimates will be open to inspection.)

All proprietors of estates paying revenue direct to Government of which any lands may be affected by the proposed drainage and improvement,

all owners of revenue-free lands borne on the Collector's general register of revenue-free lands, which may be so affected,

all persons having permanent rent-paying interests in tenures, undertenures, or lands extending to not less than one hundred standard bighas to be so affected,

^[1] Ben. Act 5 of 1871 was repealed by this Act—see s. 2, ante, p. 335.

(Schedule B.)

and all persons having permanent rent-free interests in tenures, under-tenures and lands to be so affected,

are hereby called upon to inspect the said plans and estimates.

Those who wish the works to be carried out and are willing to bear their proportion of the cost thereof are requested to send to the Drainage Commissioners their assent in writing, signifying therein, so far as possible, the nature and extent of their interest in such land, on or before the day of 18

Those who have any objection to the execution of the said works are required to send in their objection in writing to the said Commissioners on or before the said day.

All persons who are hereby called upon to give their assent or express their objections in writing are warned that under the law the Commissioners are not bound to recognize any such assent or objection unless the person making the same specifies the extent and portion of the land which he holds and the tenure or interest which he has in the same.

> Collector, for the Drainage Commissioners.

SCHEDULE B (referred to in section 37).

Bengal Drainage Act, 1880.

Take notice that the Drainage Commissioners have apportioned against you the sum of as your contribution in respect of the lands of , and that you are hereby required, within one month from the date of the service of this notice, to pay to me the said sum of Rs. , together with interest at the rate of [1] [four] per centum per annum from the , or to enter into an engagement for the payment of the same by.

instalments extending over a period of not more than ten years[2] together with simple interest, at the rate of four per centum per annum; on all instalments remaining unpaid at the date of each such payment].

Collector.

^[1] The word "four" in Schedule B was substituted for the word "five" by the Bengal Drainage (Amendment) Act, 1902 (Ben. Act 2 of 1902), s. 13 (1), post, p. 716.
[2] The words in square brackets in Schedule B were added by ibid, s. 13(2).

BENGAL ACT 9 OF 1880.

(THE CESS ACT, 1880.)

CONTENTS.

PREAMBLE.

PRELIMINARY.

SECTION.

- 1. Short title. (Commencement.) Repealed.
- 2. Extent. Proviso.

Power to exempt districts from operation of Act.

3. Repeal of District Road Cess Act, 1871, and Provincial Public Works Act, 1877.

4. Interpretation-clause.

PART I.

CHAPTER I.

IMPOSITION AND APPLICATION OF THE CESS.

5. All immovable property to be liable to a local cess.

6. Cess how to be assessed.

- 7. Public revenues not liable for more local cess than has been paid to Collector by persons liable.
- 8. Government and guaranteed railways not liable to the cess without consent of Governor General in Council.
- Application of proceeds of cess.
 Repealed.

11. Power to fix cess year.

PART II .-- MODE OF ASSESSMENT.

CHAPTER II.

VALUATION OF LANDS.

- 12. Board of Revenue may order valuation and re-valuation.

13. After five years holder of estate or tenure may apply to Collector for re-valuation.

14. Proclamation to make return of lands to be issued.

Publication of proclamation.

15. Re-valuation may be of particular estates or tenures only.16. Notice to lodge returns.

17. Form of notice and time for lodging returns.

1º. Penalty for omitting to make return.

- 19. No rent to be recovered till return is made.
- 20. No rent to be recovered for land, etc. not mentioned in return, Proviso.

4

SECTION.

- 21. If returns not furnished, Collector to make valuation.
- 22. Valuation by Collector where return untrue or incorrect.

23. Recovery of expenses of such valuation.

- 24. Person returned as cutivating raiyat may be served with notice.
- 25. If no return made, Collector may ascertain annual value of lands.

26. Collector may correct classification in returns.

27. Summary valuation of small revenue-paying estates and tenures.

- 28. Summary valuation of small revenue-free estates and rent-free tenures of which the area has been ascertained.
- 29. Computation of annual value of land comprised in a subordinate tenure in a summarily-valued estate or tenure.

- 50. When such land may be valued according to rate per acre.
 51. Holder of summarily-valued estate or tenure may lodge return.
- 32. Collector may value small estate or tenure by regular process.

Lands used for Tea, Coffee or Cinchona.

33. Return of plantations, etc.

Publication of Valuation-rolls and Duration of Valuations.

34. Valuation-rolls to be prepared.

35. Publication of rolls.

To be attested by two persons.

36. Valuation and re-valuation to be in force for five years.

37. Collector may reduce valuation, and may value and assess omitted and newly formed estates and tenures.

CHAPTER IIA.

PROCEDURE FOR VALUATION OF LANDS IN RESPECT OF WHICH A RECORD-OF-RIGHTS 1S BEING PREPARED, REVISED OR MAINTAINED.

37A. Valuation during preparation, revision or maintenance of record-of-rights. 37B. Preparation of valuation-roll by Settlement Officer.

- 37C. Method of valuation by Settlement Officer.
- 37D. Powers and functions of Settlement Officer in regard to valuation of rent-free
- 37E. Publication of draft valuation-roll and hearing of objections. 37E. Finality of entries in valuation-roll and record-of-rights.

37G. Disposal of objections and revision.

37H. Submission of valuation-roll to Collector, and Collector's procedure thereupon 37I. Term of, and Collector's power to reduce, valuation.

CHAPTER III.

RATING AND LEVY OF THE CESS.

38. Rate at which local cess shall be levied, how to be fixed.

39. Repealed.

40. Notice showing amount of cess payable to be served on zamindars.

40A. Recovery of cess from tenures in Government estates.

41. Mode of payment of local cess-

by holder of estate; by holder of tenure;

by cultivating raiyat; by holders of chaukidari chakran lands.

42. Time of payment by holder of an estate;

by tenure-holder and raiyat.

43. Distribution of valuation in case of partition.

Procedure to be followed when there is a partition.

44. Effect of opening separate account under Act 11 of 1859 or Bengal Act 7 of 1876.

SECTION.

- 45. Penalty for default of payment of instalments.
- 45. Penalty for default of payment of instalments.
 45A. Power of Collector to declare cess to be payable by usufructuary mortgagee, or to be payable to Collector direct by tenure-holder.
 46. With permission of the Board of Revenue, Collector may keep separate account of cess payable by registered holders of revenue-free estates.
 47. Recovery by holders of estates or tenures.
 48. Recovery from co-shareholders.
 49. Recovery by recorded shareholders from their co-sharers by certificate process.

CHAPTER IV.

VALUATION AND ASSESSMENT OF LANDS HELD RENT-FREE, AND PAYMENT AND RECOVERY OF CESS IN RESPECT THEREOF.

- 50. Rent-free lands in what estates or tenures to be included for the purposes of this
- 51. Holders of estates and tenures bound to return rent-free lands and to pay cess at half rates for such lands included therein.
- 52. Notice and extracts of valuation-roll to be published by Collector in respect of such rent-free lands.
- 52A. Certificate of publication of notices under section 52.
 53. Holder of rent-free land may object to valuation.
 54. Notice to be published by holders of estate in certain cases.
 55. Mode of publication.

- 56. Owner of rent-free land bound to pay cess at full rate.
 57. Instalments to be fixed by Board of Revenue.
- 58. If instalments not paid within a month, double the amount may be recovered. 59. Holders of estates, etc., may send in supplementary returns in respect of rentfree lands.
- 50. Effect of supplementary returns.
- 61. Sections applicable to amounts payable by owner, etc., of rent-free land.
 62. Section 58 not applicable to such amounts until sections 52, 53 and 54 are complied with.
- 63. Owner of rent-free land liable to pay cess in future.
 64. Additional return of rent-free land entered in return under Bengal Act 10 of 1871 may be made.
- Additional return to be deemed supplementary return. 64A. Holders of estates, etc., how to recover from holders of rent-free lands. 64B. Owner, holder or occupier of rent-free lands may be sued.
- Decree against occupier tantamount to decree against owner.
- 65. Occupier may deduct cess paid from rent.
 66. Notice to be served on holder of rent-free land requiring him to lodge return.
- 67. If no notice served, such holder bound to notify omission to Collector.
- 68. Collector thereupon may require such holder to make return.
 69. Order to have effect of notice.
 70. Liability of such holder to pay arrears of cess.

- 71. Such holder is not liable to pay cess except to Collector or his Deputy.

CHAPTER V.

VALUATION, ASSESSMENT AND LEVY OF CESS ON MINES, RAILWAYS AND OTHER IMMOVABLE PROPERTY.

- 72. Notice to return profits.
- 72A. Penalty for omitting to lodge a return.
 73. When property lies in different districts.

- 74. When property is partly in and partly outside Bengal.
 75. If return not furnished or incorrect, Collector to make valuation.
 76. Valuation on value of property.
- 77. Cost of valuation from whom to be recovered.
- 78. Notice of valuation.
- 79. Valuations under this Chapter to be annual.
 - Declaration of annual net profits by owner for five years. Effect of acceptance by Collector of declaration.

SECTION.

- 80. Notice of rate of cess and dates of payments.
 81. Recovery by occupier or owner who has paid in excess.
 82. How distributed when property in different districts.
 83. Determination of proportion of profits when property in different districts.
 84. Service of notices under this Chapter.

CHAPTER VI.

SPECIAL PROVISIONS FOR ORISSA.

- 85. Collectors in Orissa may order certain revenue-free estates to be annexed to other estates for purposes of payment of cess.
 86. Notice to be given to holder of estate to which such revenue-free estate is
- annexed.
- 87. Notice to be given to holder of revenue-free estate. 88. Cess payable by holder of revenue-free estate in such instalments as Board of Revenue may direct.
- 89. Notices to be served.
- 90. Collector may revoke orders passed under section 85.

CHAPTER VII.

MISCELLANEOUS.

- 91. Collector may appoint certain establishments. 91A. Payment of commission to tahsildars.

- 92. Powers of Collector in making valuation. 93. Commissioner or Board may revise valuation.
- 94. False returns.
- 95. Returns evidence against the maker only.
- 96. Service of notices under this Part.
- 97. Costs of service.
 - No costs to be recevered for certain notices.
- 98. Dues under the Act to be levied as public demand.
- 99. Collector may recover dues out of rent.
- Collector's claim to have priority. 100. Board of Revenue may invest any person with Collector's powers.101. Collector may delegate powers.102. Appeals against valuation.

- 103. Orders for levy of fine appealable.
- 104. Orders appealable to Commissioner.
- 105. Revision of orders by Collector, and control and supervision by Commissioner and Board.
- 106. Board may make rules.
- 107. All rights in immovable property saved unless affected by this Act.

PART III.—CONSTITUTION AND ADMINISTRATION OF THE DISTRICT FUND.

CHAPTER VIII.

CONSTITUTION AND APPLICATION OF THE DISTRICT FUND.

- 108. Constitution of District Fund.
- 109. Application of District Fund.
- 110. Committee may guarantee sums for District Fund as interest on capital.

 111. Lieutenant-Governor may apportion costs of works extending over more than one district.

CHAPTER 1X.

THE DISTRICT COMMITTEE.

SECTION.

112. Constitution of District Committee.

113. Members may hold office for five years.

Resignation of member.

114. Removal of member.

115. Member who neglects to attend meetings, or is sentenced to imprisonment, to cease to be member.

116. Appointment of ex-officio members.

Members holding salaried offices under Government not to exceed one-third.

117. Proceedings not to be invalidated by reason of excessive proportion of officials. 118. Chairman and Vice-Chairman.

119. Committee to have an office.

120. Two kinds of meetings.
121. What are special meetings.

122. President at meetings.

123. Meeting to be called on requisition.

124. Notice of meeting.

125. Quorum.

Delegation of powers to Sub-Committee. Adjournment, voting, etc., of committee.

126. Adjourned meeting.

127. Minute-book to be kept.

128. Correspondence between Committee and Lieutenant Governor. Committee to furnish information.

129. Appointment of Vice-Chairman. Vice-Chairman may be appointed ad interim. Vice-Chairman may hold office for two years.

130. Removal of Vice-Chairman. Proxies allowed.

131. Salary of District Engineer. 132. Appointment of Engineer.

Existing appointments to hold good for two years only.

Engineer may be suspended or dismissed by Lieutenant-Governor.

133. Establishment and salaries, how to be fixed.
Appointment how to be made.

134. Leave of absence to officers.

135. Salaries not to exceed one-fourth of income.

136. Appointment of Divisional Superintendent of Works.

137. Appointment of Superintendent of Works for group of districts. 138. Pensions, gratuities, etc. 138A. Provident Fund.

139. Mode of executing contracts.

140. Penalty on members and officers being pecuniarily interested in contracts. Exception.

141. Statement of communications to be prepared.

142. Statement to be forwarded to Commissioners.

143. Supplemental statement.

144. Lieutenant-Governor may include or exclude any works in or from statement. 145. Collector to submit to Committee annual statement of estimated assets for coming year.

146. Annual estimate to be prepared.

147. Works not to be executed until estimates passed or execution sanctioned.

148. Committee to determine rate of cess.

149. Limit of estimate.

150. Commissioner may revise estimate.
151. Commissioner may under certain circumstances alter estimate.
152. Procedure where estimate has been approved by not less than two-thirds of Committee.

153. When estimate is submitted by Commissioner, Lieutenant-Governor may pass orders thereon.

154. Rate determined to be reported to Lieutenant-Governor.

155. Rate to be published in Gazette.
156. Rate published to be rate in force for one year.

157. Estimates may be amended.

CHAPTER X.

BRANCH COMMITTEES.

SECTION.

158. Branch Committees.

159. Sections which apply to them. 160. Chairman and Vice-Chairman may be removed.

161. Member of Branch Committee may be additional member of District Committee.

162. Branch Committee's statements. 163. Branch Committee may require statements to be submitted to Lieutenant-Governor.

164. Funds of the Branch Committee.

165. Special powers of the Branch Committee.

166. Their estimates.
167. Limit of estimates.
168. Lieutenant-Governor may assign functions of Chapter XI to Branch Committee.
169. Lieutenant-Governor may revoke order forming Branch Committee.

CHAPTER XI.

DISBURSEMENT AND ACCOUNTS OF THE DISTRICT FUND.

- 170. Collector to prepare annual statement of the District Fund. 171. Payments on account of the District Fund.

172. Collector's monthly account.

173. Accounts of Committee.

174. Committee to appoint a sub-committee tc audit accounts.
175. Sub-Committee may call for vouchers and papers;
176. and certify correctness of accounts.
177. Accounts to be submitted to officers directed by the Lieutenant-Governor.

- 178. Vice-Chairman to prepare account of receipt and a report.
 179. Accounts to be certified by Sub-Committee and transmitted to Lieutenant-Governor.
- 180. The Committee may make by-laws with approval of Lieutenant-Governor.

By-laws to be published in Gazette.

CHAPTER XII.

MISCELLANEOUS.

181. Lieutenant-Governor may give directions as to establishments, expenses, etc.

PART IV.

CHAPTER XIII.

GENERAL.

182. Lieutenant-Governor empowered to prescribe forms and rules

SCHEDULES A TO F.—Forms.

BENGAL ACT 9 OF 1880.

(THE CESS ACT, 1880.)[1]

(13th October, 1880.)

An Act to amend and consolidate the Law relating to Rating for the Construction, Charges and Maintenance of District Communications and other works of Public Utility, and of Provincial Public Works.

Whereas it is expedient to amend and consolidate the law relating to Preamble. rating for the construction, charges and maintenance of district roads and other means of communication, and of provincial public works, within the territories administered by the Lieutenant-Governor of Bengal[2], and to the levy of a local cess[3] on immovable property situate therein, and to the constitution of local committees for the

 Legislative Papers.—For Proceedings in Council, see Calcutta Gazette, 1879, Supplement, p. 1508; ibid, 1880, Supplement, pp. 45, 291, 323, 379, 406 and 948.

Local Extent.—This Act was passed for the former Province of Bengal (see the preamble), and took effect from its commencement in several districts and parts of districts and the Lieutenant-Governor in Council is empowered to extend it to any other district or part of a district (see section 2). But the Act does not affect immovable property in Municipalities (see section 2), and the Governor in Council is empowered to exempt any district or part of a district or any estate or tenure, from the operation of the Act or any portion thereof.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 5, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum, and Pargana Dhalbhum in the District of Singhbhum, in the Chota Nagpur Division, see Vol. IV, Pt. III. See also Note [4], p. 370, post.

The Act is in force in the Sonthal Parganas—see Notifications noted in Vol. I, Part VI of the Bihar and Orissa Local Statutory Rules and Orders. Its operation is barred in the District of Angul [by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code].

LOCAL REPEALS AND AMENDMENTS.—Section 2 of the Bihar and Orissa Local Self-Government Act, 1885 (Ben. Act 3 of 1885, printed, post, p. 521), repeals and amends a number of sections (indicated post) of the present Act, in all districts in Bihar and Orissa (as now constituted) except the Sonthal Parganas district. These repeals and amendments will apply to that district when Ben. Act 3 of 1885 is extended to it.

ANNOTATED REPRINT.—For an annotated reprint of this Act, with rules and orders issued by the Board of Revenue under, or with reference to, the Act, see the B. & O. Cess Manual, 1927.

AMALGAMATION OF CESSES.—The rate imposed under the Bengal Sanitary Drainage Act, 1895 (Ben. Act 8 of 1895), is collected with the cess imposed under the present Act—see ss. 21 and 22 of the Act of 1895, post, p. 638.

^[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[3] The words "local cess" were substituted for the words "road cess and a public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (c), printed in Vol. III of this Code.

(Secs. 1-2.)

management of the proceeds of the said local cess,[1] and also to provide for the construction and maintenance of other works of public utility out of the proceeds of the said local cess[1]; It is hereby enacted as follows :---

Preliminary.

Short title.

1. This Act may be called the Cess Act, 1880;

(Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).

Extent.

2. This Act shall take effect at once in every district[2] and part of a district in which Bengal Act 10 of 1871[3] (an Act to provide for local rating for the construction and maintenance of roads and other means of communication) and Bengal Act 2 of 1877[8] (an Act to provide for the levy of a cess for the construction, charges and maintenance of provincial public works) may be in force on the date of the commencement of this Act.

[The Lieutenant-Governor may, by notification, in the Calcutta Gazette, extend its provisions to any other district or part of a district [4] situate in the territories for the time being administered by him, and this Act shall take effect accordingly therein from the date specified in such notification:

Proviso.

Provided that nothing herein contained shall be deemed to affect any immovable property within the limits of the ordinary original jurisdiction of the High Court of Judicature at Fort William in Bengal, or within the limits of any first or second class municipality under the Bengal Municipal Act, 1876. [5]

Ben. Act 5 of 1876.

2] These comprise the following districts in Bihar and Orissa:

Bhagalpur Division-

Bhagalpur, Monghyr and Purnea.

Chota Nagpur Division-

Hazaribagh, Manbhum, Palamau and Ranchi.

Orissa Division-

Balasore, Cuttack and Puri.

Patna Division-

Gaya, Patna and Shahabad.

(Now Tirhut Division)— Champaran, Darbhanga, Muzaffarpur and Saran.

[3] Ben. Acts 10 of 1871 and 2 of 1877 have been repealed by s. 3 of the present

[4] This Act has been extended under s. 2, para. 2, to Pargana Dhalbhum in the District of Singhbhum (see Notification, dated the 26th September 1883, in the Calcutta Gazette of 1883, Pt. I, p. 809), and to the Porahat Estate in the same district (see Notification no. 222, dated the 21st January 1896, ibid, p. 98) see Vol. I, Pt. VI, of the Bihar and Orissa Local Statutory Rules and Orders. It has also been extended to the Kolhan Government Estate in the same district by Notification no. 4444, dated the 1st August 1917, printed in the B. and O. Gazette, Pt. II, p. 1680. See also the Notes on the Local Extent at the beginning.

[5] Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), which has been further repealed and re-matted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922 in Vol. III of this Code), and this reference should now be taken to be made to the latter Act—see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, in Vol. III of this Code.

^[1] The words "local cess" were substituted for the words "road cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4(1) (y) printed in Vol. III of this Code.

(Secs. 3-4.)

The Lieutenant-Governor may, by notification in the Calcutta Power to Gazette, exempt any district or part of a district, or any estate or tenure, districts from the operation of this Act, or any portion thereof [1] and may at any from operation of time, by a similar notification, revoke such exemption.

3. The said Bengal Act 10 of 1871 and the said Bengal Act 2 of Repeal of District 1877 are hereby repealed; but this repeal shall not affect the past Road operation of such Acts or anything duly done or suffered, or any right, Cess Act, and privilege, obligation or liability acquired, accrued or incurred there- Provincial under:

and all rules, orders, appointments and valuations in force at the Act, 1877. commencement of this Act which were made under the said Acts shall, so far as they are consistent with this Act, be deemed to have been made under this Act:

and all[2] cess which were imposed under the said Acts shall be deemed to have been imposed under this Act, and every sum due to the Collector in respect of arrears of cess, of expenses incurred, of fees or costs payable, of notices served, or of fines imposed under either of the said Acts, shall be deemed to be due on such accounts under this Act:

and all[2] cess so imposed and every sum so due may be levied as herein provided.

4. In this Act, unless there be something repugnant in the subject Interpreor context-

"annual value of any land, estate or tenure" means the total * * "Annual [3] rent which is payable, or, if no * * [3] rent is actually payable, value, of land, etc. would, on a reasonable assessment, be payable, during the year by all the cultivating raiyats of such land, estate, or tenure, or by other persons in the actual use and occupation thereof:

[4] Explanation.—For the purposes of the foregoing definition, whatever is lawfully payable or deliverable, or would, on a reasonable assessment, be lawfully payable or deliverable, in money or in kind, directly to the Government,—

(a) by raiyats cultivating land in a Government estate—on account of the use or occupation of the land, or

(b) by other persons in the actual use and occupation of land in such an estate, shall be deemed to be "rent":

"Commissioner" means the Commissioner of the Division:

"cultivating raiyat" means a person cultivating land and paying sioner". rent therefor not exceeding one hundred rupees per annum:

" Commis-" cultivating

raiyat ":

[4] This Explanation was added by ibid, s. 2(2).

^[1] The words "or any portion thereof" were substituted for the words "or from the operation of so much thereof as relates to the road cess, or as relates to the public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 5, printed in Vol. III of this Code.

[2] The word "cess" was substituted for the word "cesses" by s. 4(2) ibid.
[3] The words "revenue or" were repealed by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 2 (1), post, p. 927, and are omitted.

(Sec. 4.)

Explanation.—When rent is payable in kind, the money value thereof shall, for the purposes of this Act, be taken to be the annual value of the landlord's share of the crop calculated on an average of the three years next preceding any valuation or re-valuation under this Act:

"District": "district" means the local area to which a Collector is appointed, and no lands situate beyond the limits of such local area shall be deemed to form part of a district by reason of their forming part of an estate paying revenue to the Collector thereof:

"Estate": "estate" means

- (1) land included under one entry in the general registers of revenue-paying lands and of revenue-free lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876,[1] or any similar law for the time Ben. Act 7 being in force;
- (2) any land, other than the holding of a cultivating raiyat, the revenue or rent of which may be payable directly to the Collector or any person specially appointed by him to collect the same;
- (3) any land acquired under any rules issued by, or under authority of, Government for the sale, grant, lease or clearance of waste-lands:

"Holder of an estate or tenure" means all or any of the holders tenure": thereof, and where two or more persons are jointly holders thereof, they shall be jointly and severally liable under this Act:

"Holding": "holding" means the land held by a cultivating raiyat:

"Immovable property" includes lands and all benefits to arise out property": of land and things attached to the earth, or permanently fastened to anything which is attached to the earth, but does not include crops of any kind, or houses, shops or other buildings:

"Land": "land" means land which is cultivated, uncultivated or covered with water, and does not include houses or buildings:

"Part," "Part," "Chapter" and "section" mean respectively a Part, and "section":

"Schedule": Schedule "means a schedule to this Act annexed, and every such schedule shall be read as part of this Act:

"Tenure": "tenure" includes every interest in land, whether rent-paying or not save and except an estate as above defined, and save and except the interest of a cultivating raiyat:

(Sec. 4.)

"the Collector" includes any person specially invested with the "The Colpowers of a Collector for the purposes of this Act, and means—

- (i) when used in reference to revenue-paying estates and lands comprised therein, to all proceedings connected therewith, and to the assessment and levy of [1] cess in respect thereof, the Collector or other similar officer on whose revenue-roll such estates are borne;
- (ii) when used in reference to revenue-free estates and lands comprised therein, to all proceedings connected therewith and to the assessment and levy of [1] cess in respect thereof,

the Collector or other similar officer on whose general register of revenue-free lands such estates are borne:

"the Collector of the district" includes any person specially invested "The Colwith the powers of a Collector for the purposes of this Act, and means lector of the the officer in charge of the revenue-administration of a district:

[2]" the Settlement Officer" means the Revenue-officer appointed "The Settlement by the Local Government, under the designation of Settlement Officer or Officer:" Assistant Settlement Officer, for the purpose of preparing or revising records-of-rights, under Chapter X[8] of the Bengal Tenancy Act, 1885, or any other law for the time being in force, in respect of the lands in any local area, estate or tenure, or part thereof,

and includes any officer appointed by the Local Government to maintain records-of-rights so prepared or revised:

" District Board ": Ben. Act 3

of 1885.

Act 8 of 1885.

> [4]" District Board" means the [6] "the Committee" means "The Comsions of the Bengal Local Self-Gov- district. ernment Act of 1885.[6]

> Board constituted under the provi- the [7] District Committee of any mittee ".

[4]" District Fund " means the fund formed under section 52[5] of

"District Fund ".

the Bengal Local Self-Government Ben. Act 3 of 1885. Act of 1885.

> [1] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

Vol. 111 of this Code.
[2] This definition of "the Settlement Officer" was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 2 (3), post, p. 927.
[3] Printed in Vol. I of this Code.
[4] The definitions of "District Board" and "District Fund" were substituted for the definition of "the Committee" by the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, post, p. 522 and apply to all areas in Bihar and Orissa in which that Act is in force. The new definitions do not apply to the Sonthal Parganas but will apply to that district when Ben. Act 3 of 1885 is extended to it.

[5] Printed, post, p. 521.
[6] This definition of "the Committee" applies only to the Sonthal Parganas district. It will cease to apply when Ben. Act 3 of 1885 is extended to it. See foot

note. [1] on p. 369.

[7] The words "District Committee" were substituted for the words "District Read Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4(5), printed in Vol. III of this Code.

(Secs. 5-8.)

* Year."

"Year" means the cess year as determined by the [1] Board of Revenue under section 11.

PART I. CHAPTER I.

IMPOSITION AND APPLICATION OF THE [2] CESS.

All immovto a local cess.

5. From and after the commencement of this Act in any district or to be liable part of a district, all immovable property situate therein, except as otherwise in sections 2 and 8 provided, shall be liable to the payment of a [3]local cess.

Cess how to be assessed.

6. The [4] local cess shall be assessed on the annual value of lands and on the annual net profits from mines, quarries, tramways, railways and other immovable property ascertained respectively as in this Act prescribed;

and the [5] rate at which such [6] cess shall be levied for each year shall be determined for such year in the manner in this Act prescribed:

Provided that the rate at which * * [7] such cess shall be levied for any one year shall not exceed the rate of [8] one anna on each rupee of such annual value and annual net profits respectively.

Public liable for more local cess than has been paid to Collector by persons liable.

7. Nothing in this Act contained shall be deemed to require the payrevenues not ment by the Lieutenant-Governor of Bengal, from the public revenues, of any sum as [9] local cess in excess of such sums as may have been paid as such cess to the Collector by persons liable to pay the same.

Government and guaran-teed railways not liable to the cess sent of Governor General in Council.

8. No railway or tramway, the property of the Government of India, and no railway or tramway, of which the dividend is guaranteed by Her Majesty's Secretary of State for India in Council, or by the Governor General of India in Council, or by the Lieutenant-Governor of Bengal, without con-shall be liable to [10] local cess under the provisions of this Act without the previous consent of the Governor-General of India in Council.

g. 4 (2).

[7] The word "each" was repealed by *ibid*, s. 6 (a), and is omitted.

[8] The words "one anna" were substituted for the words "one-half anna" by

ibid, s. 6 (b).

[9] The words "local cess" were substituted for the words "road cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. ard O. Act 1 of 1976), s. 4 (1) (y),

printed in Vol. III of this Code.
[10] The words "local cess" were substituted for the words "road cess or public works cess" by ibid. s. 4 (1) (2).

^[1] The words "Board of Revenue" were substituted for the words "Lieutenant-Governor" by s. 8 of the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), printed in Vol. III of this Code.

[2] The word "cess" was substituted for the word "cesses" by ibid, s. 4 (2).

[3] The words "local cess" were substituted for the words "road cess and a public works cess" by ibid, s. 4(1) (c).

[4] The words "local cess" were substituted for the words "road cess and the public works cess" by ibid, s. 4 (1) (b).

[5] The word "rate" was substituted for the word "rates" by ibid, s. 4 (3).

[6] The word "cess" was substituted for the words "cesses respectively" by ibid, a 4 (2).

(Secs. 9-12.)

- [1]9. The proceeds of the local cess in each district and all sums Application levied or recovered as fines, penalties, interest or otherwise in respect of proceeds of cess. thereof shall be paid into the District Fund of the District.
- 10. Application of proceeds of public works cess. Repealed by the B. & O. Cess (Amendment) Act (B. & O. Act 1 of 1916), s. 3.
- 11. The [2] Board of Revenue shall, by an order[8] published in the Power to Calcutta Gazette, fix the date from which the cess[4] leviable under this Act in any district or part of a district shall take effect therein, and may fix and from time to time alter the date from which the cess year shall run in any district or part thereof.

PART II.—MODE OF ASSESSMENT.

CHAPTER II.

VALUATION OF LANDS.

12. Upon the commencement of this Act in any district or part of a Board of district, the [5] Board of Revenue may order that a valuation shall be Revenue made of such district or part of a district;

may order valuation and revalua-

and from time to time, after the expiration of the term of five years tion. from the beginning of the year in which the levy of the cess[4] took effect in accordance with any such valuation, or with any re-valuation as hereafter provided in this section [6] or in Chapter IIA, or at any time within twelve months previous to the expiration of such term,

the [5] Board of Revenue may, if [7] they think fit, order that a revaluation shall be made of any such district or part of a district, and such re-valuation shall take effect from the beginning of such year as the [5] Board of Revenue may direct.

^[1] This s. 9 was substituted for the former s. 9 by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 7, printed in Vol. III of this

^[2] The words "Board of Revenue" were substituted for the words "Lieutenant-Governor" by ibid, s. 8.

As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

^[3] For a list of orders made under section 11 for Bihar, see the Bihar and Orissa

Local Statutory Rules and Orders, Vol. I, Pt. VI.

[4] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in

^[5] The words "Board of Revenue," in s. 12, were substituted for the words "Lieutenant-Governor" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), post, p. 927.

[6] The words "or in Chapter IIA" in s. 12 were inserted by ibid, s. 3.

[7] The word "they" in s. 12, was substituted for the word "he" by ibid, s.

^{5 (2).}

(Secs. 13-14.)

[1]Provided that it shall be permissible for the Board of Revenue to direct that such re-valuation shall take effect from the beginning of the financial year next following the completion of the valuation roll of any estate or of any pargana, thana or other local division comprised in a district.

After five years holder of estate or tenure may

13. Whenever the term of five years shall have expired from the beginning of the year in which the levy of the cess[2] took effect in any estate or tenure in accordance with any valuation [3] [or re-valuation] Collector for under this Act or Bengal Act 10 of 1871[4], the holder of any such estate re-valuation. or tenure may apply to the Collector to re-value his estate or tenure, and for such purpose shall lodge in the office of the Collector returns in the form in Schedule A contained; and thereupon the Collector shall proceed to re-value such estate or tenure, and, if he make any alteration in the valuation of any such tenure, shall give notice of such alteration to the holder of the estate or superior tenure in which such tenure is included, and shall alter the valuation of such estate or superior tenure accordingly:

Provided that no re-valuation or reduction of the amount of cess[2] previously payable in respect of any estate or tenure, in consequence of a re-valuation under this section, shall take effect until the beginning of the year commencing next after such re-valuation, unless the application for re-valuation shall have been made and the necessary returns lodged in the Collector's office within three months after the beginning of a year, in which case such re-valuation and reduction, if any, shall take effect from the commencement of such year.

Proclamation to make return of lands to be issued.

14. Whenever the [5] Board of Revenue has ordered [6] under section 12 that a valuation or a re-valuation of any district or part of a district shall be made for the purposes of this Act, the Collector of the district shall cause a proclamation to be issued requiring every holder of an estate or tenure which is liable to pay an annual amount of revenue or an annual amount of rent exceeding one hundred rupees and every holder of a revenue-free estate or rent-free tenure the gross annual rental of

^[1] The proviso was added by the Bihar and Orissa Cess (Amendment) Act, 1916
(B. and O. Act 1 of 1916), s. 9, printed in Vol. III of this Code.
[2] The word "cess" was substituted for the word "cesses" by ibid, s. 4 (2).
[3] The words "or re-valuation," in s. 15, were inserted by the Bengal Cess (Amendment no. 2) Act, 1881 (Ben. Act 2 of 1881), s. 3, printed post, p. 447.
[4] Ben. Act 10 of 1871 has been repealed by this Act—see s. 5, ante.
[5] The words "Board of Revenue," in s. 14 were substituted for the words "Lieutenant-Governor" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5(1). post. p. 927. 1910), s. 5(1), post, p. 927.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of

^[6] The words " under section 12," in s. 14, were inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 4, post, p. 927.

(Secs. 15-17.)

which exceeds one hundred rupees, severally to lodge at the office of such Collector within one month a return of all lands comprised in his estate or tenure in the form in Schedule A contained, giving the particulars in such form set forth.

The Collector of the district shall cause such proclamation to be pub- Publication lished by affixing a copy thereof in some conspicuous place in the office of of proclasuch Collector, in every Civil Court, in every police-station, and in the mation. office of every Subdivisional Officer within the district, and in any other manner which the [1] [Board of Revenue] may from time to time direct.

15. At any time at which the [1] [Board of Revenue] might order a Re-valuation re-valuation of a district or part of a district to be made as provided by sec- may, be of re-valuation of a district or part of a district to be made as provided by section 12, [2][they] may, if [2][they] think fit, instead of so ordering, estates or make an order that particular estates or tenures only in such district tenures only. or part of a district shall be re-valued.

16. Whenever any proclamation has been published, as mentioned Notice to in section 14, in any district, and whenever the [1][Board of Revenue] lodge returns. has made an order, under the last preceding section, that a re-valuation of particular estates and tenures only shall be made, the Collector shall cause a notice to be served in respect of every estate and tenure which is to be valued or re-valued, and in respect of which no return shall have been lodged in accordance with the requirement of such proclamation, requiring every holder of such estate or tenure severally to lodge at the office of the Collector the return mentioned in section 14;

and shall also cause a similar notice to be served in respect of every tenure included in any such estate or tenure which may have been named in any return lodged in pursuance of the provisions of this Act, or of Bengal Act 10 of 1871, [3] either for the purposes of the valuation or re-valuation then contemplated, or for the purposes of any previous valuation or re-valuation, or of which the existence may in any other way have come to his knowledge.

17. The notice mentioned in the last preceding section shall be in the Form of Form No. I in Schedule B contained, or in the Form No. II in the said notice and time for Schedule contained, as the case may be, and shall require every holder lodging of the estate or tenure severally to lodge the return within the time returns. specified below, viz.-

In the case of Revenue-paying Estates and Rent-paying Tenures. If the return relate to an estate or Within six weeks of the service of the tenure which is liable to the payment of annual revenue or of rent not exceeding

^[1] The words "Board of Revenue," were substituted for the words "Lieutenant-Governor" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), printed, post, p. 927.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III

^[2] This word "they," in s. 15, was substituted for the word "he" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910) s. 5 (2), post, p. 927,
[3] Ben. Act 10 of 1871 has been repealed by this Act—see s. 3, ante, p. 371.

(Secs. 18-19.)

Rs. 500, or to any share or interest in such estate or tenure;

If the return relate to any other or tenure, or to any share or interest

Within three months of the service of the notice.

In the case of Revenue-free Estates and Rent-free Tenures.

If the return relate to any estate or tenure of which the gross annual rental does not exceed Rs. 500, or to any share or interest in such estaté or tenure:

Within six weeks of the service of the

If the return relate to any other estate or tenure, or to any share or interest

Within three months of the service of the notice.

The Collector may in his discretion extend the time allowed for lodging any such return.

Penalty for omitting to make return.

18. All holders of estates or tenures in respect of which such notice has been served who shall, without sufficient cause being shown to the satisfaction of the Collector, refuse or omit to lodge the required return in the office of such Collector within the time allowed by such notice in respect of the estate or tenure which they hold, or within any extended time which may have been allowed by the Collector for lodging such return, shall be severally liable to a fine which may extend to fifty rupees for every day after the expiration of such time or extended time until such return is furnished, or until the value of the lands comprised in their respective estates and tenures shall have been otherwise ascertained and determined by the Collector as hereinafter provided.

The amount of such fine accruing due from time to time may be levied by the Collector as provided in section 98 or 99, and the fact of an appeal against such fine being pending shall not avail to prevent the levy of any such fine pending the disposal of the appeal, unless the Commissioner shall otherwise direct.

Whenever the amount levied in respect of any such fine exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner; and no further levy for such default shall be made otherwise than by authority of the Commissioner.

No rent to till return is made.

19. From and after the expiry of the time allowed by the notice. be recovered or of any extended time under the provisions of section 17, every holder of an estate or tenure in respect of which such notice has been served shall be precluded from suing for or recovering rent for any land or tenure situate in any estate or tenure in respect of which no return has been lodged as aforesaid.

> The Collector may send a list to the Civil Court of all such holders so making default in lodging returns as aforesaid, and such Court shall take judicial notice of the same.

> Whenever the required return is lodged in respect of any estate or tenure, or whenever the valuation of any such estate or tenure has been otherwise completed, the disability imposed on the holder thereof by this section shall cease; and if such estate or tenure shall have been included

(Secs. 20-22.)

in any list as aforesaid, the Collector shall forthwith give notice to the Civil Court of the cessation of such disability.

20. Every holder of an estate or tenure in respect of which a return No rent to has been made as required by this Chapter shall be precluded from for land, suing for or recovering-

be recovered etc., not

- (a) any rent whatsoever for any land, holding, or tenure forming in return. part of the estate or tenure to which such return relates, but which has not been mentioned in such return, unless it be proved that the holding or tenure for the rent of which the rent is claimed was created subsequently to the lodging of such return;
- (b) rent at any higher rate than is mentioned in such return for any land, holding or tenure included in such return, unless it be proved that the rent of such land or tenure has been lawfully enhanced subsequently to the lodging of such return:

Provided that the Collector may at his discretion, at any time Proviso. within six months from the presentation of any return made under this Part, receive a petition correcting any such return;

and on the acceptance of such petition may make such correction in the valuation of the estate or tenure as may be required;

and as soon as the person in respect of whose estate or tenure the return and valuation have been so corrected shall have paid in all sums due by him as [1] [local cess] in accordance with such corrected valuation and not otherwise, such person may recover such rent as may be due to him on any tenure or land included in the return of such estate or tenure at any rate not being in excess of the rate shown in the corrected return as pavable in respect of such tenure or land.

Such notices as the Collector may direct shall be served upon the parties affected by such petition at the expense of the person lodging the return as aforesaid.

21. If no return shall have been lodged in respect of any lands for If returns which notice under section 16 has been issued, the Collector may, after furnished, the expiration of the time allowed by the notice, or of such extended time Collector to as is mentioned in section 17, ascertain and fix by such ways and means tion. as to him shall seem expedient, the annual value of any estate, tenure, or lands mentioned in such notice; and all expenses incurred in making such valuation may be recovered with all costs of recovery thereof as provided in sections 98 and 99.

[2]22. If the Collector is satisfied, for reasons to be recorded by him Valuation by in writing, that any return made under this Act is untrue or incorrect, where return.

^[1] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (a) printed in Vol. III of this Code.
[2] This section was substituted for the original s. 22, by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 6, printed, post, p. 927.

(Secs. 23-26.)

untrue or incorrect.

he may, by such ways and means as to him may seem expedient, ascertain and fix the annual value of the lands in respect of which the return has been made:

Provided that no such action shall be taken without giving notice to the person who made the return and allowing him an opportunity to prove that the return is not untrue or incorrect.

Recovery of expense of such valuation.

[1]23. The expense of any valuation made by the Collector under section 22 may be recovered, in the manner prescribed in sections 98 and 99, from the person by whom the untrue or incorrect return was made:

Provided that, where such return relates to lands for which no rent is payable by cultivating raiyats to the person who made the return, and the annual value of such lands, as determined by the Collector under section 22, does not exceed by one-fifth the value stated in such return, the said expense shall be borne by the [2] [District Fund.]

Person returned as cultivating raiyat may be served with notice.

24. The Collector may, whenever he may think fit, cause a notice in the Form No. I in Schedule B contained to be served on any person holding any lands or possessing any interest therein, although such person may have been mentioned in any return as a cultivating raiyat; and thereupon such person shall be bound to make a return of the annual value of such lands within one month from the service of such notice in the form in Schedule A contained, and the provisions of sections 17 and 18 regarding extension of time for lodging a return and regarding fines respectively shall be applicable to such person.

If no return made. Coll ector may ascertain annual valuo of lands.

25. If no return is made by any person on whom a notice has been served as provided in the last preceding section, the Collector may proceed by such ways and means as to him shall seem expedient, to ascertain the annual value of the lands held by such person; and, in case it appears that such annual value is greater than the rent paid by such person, the expense of such valuation shall be borne by such person and may be recovered with all costs of recovery thereof as provided in sections 98 and 99, but in all other cases shall be borne by the [27] [District Fund.]

Collector may correct classification in returns.

26. If it shall appear to the Collector that any person on whom a notice has been served under section 24 has been wrongly classed in the return as a cultivating raiyat, the Collector may direct that the entry be corrected and that such person be classed as a tenure-holder;

and thereupon such person shall be deemed to be a tenure-holder for the purposes of the assessment and levy of the [3] cess in respect of the lands held by him.

^[1] This section was substituted for the original s. 23 by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 6, printed, post, 927.
[2] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.
[3] The word "cess" was substituted for the word "cesses" by ibid, s. 4 (2).

(Secs. 27-29.)

- 27. Whenever the revenue annually payable in respect of any estate, Summary or the rent annually payable in respect of any tenure, does not exceed valuation of small the sum of one hundred rupees, the Collector may, without issuing any revenuenotice for such estate or tenure
 - estates and
 - (a) in any case determine the annual value of the land comprised tenures. therein to be in a permanently-settled estate or tenure, a sum not exceeding three times, and in a temporarily-settled estate or tenure, a sum not exceeding twice, the amount of the annual revenue or rent payable therefor; or
 - (b) when the area of the said estate or tenure has been ascertained, determine the annual value of such estate or tenure to be at such rate per acre as to him shall seem fit.
- 28. When the area of any revenue-free estate or rent-free tenure, Summary the gross rental of which does not exceed, or is not estimated by the small Collector to exceed, the sum of one hundred rupees has been ascertained, revenue-free the Collector may, without issuing any notice for such estate or tenure, rent-free determine the annual value of such estate or tenure to be at such rate per tenures of acre as to him may seem fit.

which the area has been ascertained.

tenure in a

- 29. When the land contained in any estate or tenure has been sum- Computation marily valued by the Collector in the manner provided by clause (a) of of annual value of land section 27, the annual value of any portion of such land which is com-comprised in prised within a tenure subordinate to such estate or tenure shall be a subordidetermined according to the following rules:-
 - (1).—When the subordinate tenure comprises the whole of the summarily estate or superior tenure, the annual value of the subordi- or tenure. nate tenure shall be taken to be the same as that of the estate or superior tenure.

Example.—An estate paying a revenue of Rs. 80 is summarily valued by the Collector under clause (a) of section 27, at Rs. 200. The whole estate is let in patni for a rent of Rs. 120. The annual value of the patni tenure will be Rs. 200.

- (2).—When the subordinate tenure comprises a part only of the land constituting the estate or superior tenure—
 - (a) the difference between the annual value of the estate or superior tenure, and the revenue or rent payable in respect of such estate or superior tenure, shall first be ascertained;
 - (b) next, the ratio such difference bears to such which revenue or rent shall be ascertained;
 - (c) then the amount which bears the same ratio to the rent payable in respect of the subordinate tenure shall be ascertained:
 - (d) half of the amount so ascertained shall be added to the rent payable in respect of the subordinate tenure: and

(Secs. 30-33.)

the result shall be taken to be the annual value of the subordinate tenure.

Example A.—An estate paying revenue of Rs 50 is summarily valued by the Collector under clause (a) of section 27 at Rs. 100. A part only of the estate is let in patni for a rent of Rs. 37-8.

The difference between the annual value of the estate (Rs. 100) and the revenue paid in respect of it (Rs. 60) is Rs. 40. This difference bears a ratio of two-thirds to this revenue (Rs. 60).

The amount which bears the same ratio (two-thirds) to the rent payable in respect of the patni (Rs. 37-8) is Rs. 25;

add half of Rs. 25 to the rent payable in respect of the *patni* tenure, and the result (Rs. 37-8+Rs. 12-8=) Rs. 50 will be the annual value of the *patni* tenure.

Example B.—Within the patm tenure paying a rent of Rs. 37-8, as in Example A, is a darpatmi tenure paying a rent of Rs. 27.

The difference between the annual value of the patmi tenure ascertained as above (Rs. 50) and the rent payable in respect of the patmi (Rs. 37-8) is Rs. 12-8, which bears a [1][ratio] of one-third to the said rent.

The amount which bears the same ratio (one third) to the rent payable in respect of

the darpatni (Rs. 27) is Rs. 9; add half of Rs. 9 to the rent payable in respect of the darpatni, and the result (Rs. 27+Rs. 4-8=) Rs. 31-8 will be the annual value of the darpatni tenure.

When such land may be valued rate per acre.

Holder of summarily

or tenure may lodge

return.

- **30.** When the land contained in any estate or tenure has been summarily valued according to a rate per acre, under clause (b) of section 27, according to or under section 28, the annual value of the land comprised in any subordinate tenure shall be taken at the same rate per acre as that of the estate or superior tenure.
- 31. The holder of any estate or tenure which has been summarily valued under section 27 or 28 may, within one month from the posting valued estate of the valuation-roll in respect thereof under section 35, lodge a return in the form in Schedule A contained in regard to such estate or tenure, and thereupon such return shall be deemed to be a return made as required by section 16 and shall be dealt with accordingly.

Collector may value small estate or tenure by regular process.

32. Instead of proceeding to value any estate or tenure summarily under the provisions of section 27 or 28, the Collector may, if he think fit, cause a notice to be served in respect of any such estate or tenure in the Form No. I in Schedule B contained, or in the Form No. II in the said Schedule contained, as the case may be, and thereupon all the provisions of this Part shall apply in the same way as they would have applied if the annual Government revenue or rent payable in respect of such estate or tenure had exceeded one hundred rupees.

Lands used for Tea, Coffee or Cinchona.

Return of plantations, etc.

33. In the case of lands acquired under any rule issued by, or under the authority of, the Government for the sale, lease, grant or clearance of waste-lands, or held directly from Government, and used for the cultivation of tea, coffee, or cinchona, the Collector shall, in lieu of the notice prescribed by section 16, cause a notice to be served calling on the holder of such lands to lodge, within two months of the service of such notice, a return in the form in Schedule C contained, giving the particulars in such

^[1] The word "ratio," in Example B, was substituted for the word "rate" by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

(Secs. 34-36.)

form set forth; and the annual value of such lands shall be fixed at ten rupees in respect of every acre therein entered as cultivated, unless the Board of Revenue shall in any particular case prescribe a lower rate.

The provisions of sections 18 and 21 shall apply to all lands in respect of which a notice has been issued under this section.

Publication of Valuation-rolls and Duration of Valuations.

34. Whenever any valuation or re-valuation is made under this Part, Valuationthe Collector shall cause to be prepared from the returns furnished to rolls to be him and from the valuations made by him in accordance with this Act a valuation-roll of each estate within his district and of the tenures therein comprised, noting thereon for each estate the amount of revenue annually payable to Government on which the deduction specified in section 41 is to be calculated.

On the application of any holder of an estate or tenure or holding, and on payment of such copying fee as the Board of Revenue shall from time to time determine, the Collector shall cause to be furnished to such holder a copy or corrected copy of so much of any such returns, and of any such roll, as relates to the lands included within his estate, tenure or holding.

35. On the completion of every roll prescribed under this Part, the Publication Collector shall cause a copy thereof to be posted up at the mal-cutcherry of rolls. of the estate to which such roll refers, and shall cause extracts of such portions of any such roll as refer to any tenure to be posted up at the mal-cutcherry of such tenure:

Provided that, if no such mal-cutcherry be found, such roll and such extracts shall be posted up at some conspicuous places on the estate and tenures respectively to which they refer, and that, if such estate or tenure cannot be found, such roll and such extracts shall be posted at some conspicuous place in any village in which such estate or tenure is believed to be situate.

The person who is entrusted with the publication of any such[1] To be [roll or extract,] shall obtain an acknowledgment in writing signed by attested by two pertwo persons who may be either respectable residents of the neighbour-sons. hood, or chaukidars, or other officers of Government, to the effect that such[1][roll or extract] was duly published on the spot, and shall give in such acknowledgment to the Collector.

36. Except as otherwise in this Part expressly provided, every valu- Valuation ation and re-valuation made under this Chapter shall remain in force and re-valufor the term of five years from the date fixed by the [2] [Board of Revenue] ation to be in force

^[1] The words "roll or extract" were substituted for the word "return" by the years. Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 10, printed

in Vol. III of this Code.

[2] The words "Board of Revenue," in s. 36, were substituted for the words "Lieutenant-Governor" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), post, p. 927.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vel. III

of this Code.

(Secs. 37-37B.)

under section 12 as the date from which the cess leviable in pursuance thereof shall take effect, and thereafter, until another re-valuation and assessment in substitution therefor shall have been ordered and completed.

Collector may reduce valuation

37. Nothing in section 36 contained shall be held to debar the Collector, with the sanction of the [1][Commissioner], from making at any time any reduction which he may think fit in the valuation of any estate or tenure;

and may value and assess omitted and newlyformed estates and tenures.

or from making a valuation of and assessing and levying cess under the rules laid down in this Part upon any estate or tenure which for any whatever has been omitted from the valuations and assessments for the time being in force, or which was not in existence when such valuation or assessment was made.

[2] CHAPTER II-A.

PROCEDURE FOR VALUATION OF LANDS IN RESPECT OF WHICH A RECORD-OF-RIGHTS IS BRING PREPARED, REVISED OR MAINTAINED.

Valuation during preparation, revision or maintenance of record-of rights.

37A. (1) Notwithstanding anything contained in Chapter II, the [8] Board of Revenue may, if they think fit, order [4] that a valuation shall be made by the Settlement Officer of any local area, estate or tenure, or part thereof, in respect of which—

(a) a record-of-rights is being prepared or revised under Chapter X[5] of the Bengal Tenancy Act, 1885, or any other law for g of 1881

the time being in force, or

(b) a record-of-rights so prepared or revised is being maintained by an officer appointed by the Local Government in that behalf.

(2) Every valuation made under sub-section (1) shall take effect from the beginning of such year as the Board of Revenue[3] may direct:

Provided that no such valuation shall take effect before the expiration of the period of five years prescribed by section 36 for the continuance of the last preceding valuation (if any).

Preparation of valuationroll by Settlement Officer.

37B. (1) When an order has been issued by the Board of Revenue[3] under section 37A, the Settlement Officer shall, at the time of preparing

[2] Chapter IIA (sections 37-A to 37-I) was inserted by ibid, s. 8, post, p. 928, see

also footnote [3] on p. 385. [3] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

[4] For a list of orders made under section 37A, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.
[5] Printed in Vol. I of this Code.

^[1] This word "Commissioner," in s. 37, was substituted for the words "Board of Revenue" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 7, post,

(Secs. 37C-37E.)

or revising the record-of-rights for the local area, estate or tenure, or part thereof, to which such order relates, prepare a valuation-roll showing the annual value of all lands comprised within such local area, estate or tenure.

- (2) Where the lands of a local area, estate or tenure, in respect of which a valuation-roll is to be prepared under sub-section (1), are situate in more than one district, the Settlement Officer may prepare the valuation-roll in respect of the lands lying in one district; and valuation may be effected and brought into force for the portion of the local area, estate or tenure situate in such district in accordance with the procedure hereinafter prescribed.
- 37C. The Settlement Officer shall, without calling for returns from Method of the holders of estates or tenures, ascertain and fix the annual value,— valuation by
 - (a) in the case of land the rent of which is payable in cash—on officer. the basis of the rent which has been entered as payable therefor in the record-of-rights, and

(b) in all other cases—by such ways and means as the Board of Revenue [1] may prescribe [2] in that behalf.

37D. Notwithstanding anything contained in section 37C, the Powers and Settlement Officer may, for the purpose of ascertaining or fixing the functions of Settlement annual value of any land held without payment of rent, other than land Officer in mentioned in section 33, and other than estates entered on the general regard to valuation of register of revenue-free lands of the district, exercise any of the powers rent-free and functions which are exercisable by a Collector under Chapter IV. lands.

functions which are exercisable by a conector under charges 1.

[3] 37E. When a valuation-roll has been prepared the Settlement Publication of valuation roll and Officer-

- (a) shall publish it together with, and in the manner and for the hearing of period prescribed by the law for the time being in force for objections. the final publication of, the record-of-rights, and
- (b) shall receive objections to any entries in the valuation-roll made within two months of the publication of the said roll:

Provided that, if the [1] Board of Revenue so directs, the valuationroll may be published at any time after the final publication of the record-of-rights, in the manner and for the period prescribed by the law for the time being in force for the final publication of the record-ofrights:

Provided, also, that the Settlement Officer may extend the period within which objections will be received, if he thinks fit.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

^[2] For an order made under section 37C (b), see the Bihar and Orissa Local

Statutory Rules and Orders, Vol. I, Pt. VI.

[3] Sections 37E to 37G were substituted for the original sections 37E to 37G by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 11, printed in Vol. III of this Code. 25

(Secs. 37F-37I.)

Finality of entries in valuationroll and record-of rights.

[1]37F. Notwithstanding anything contained in the foregoing section, but subject to the provisions of section 37I, where the Settlement Officer has ascertained and fixed the annual value of any land in the manner described in (a) of section 37C, no objection shall be received against the entry of such annual value in the valuation-roll; and the entry in the record-of-rights of the amount of rent payable in cash for such land shall, for the purpose of this Act, be final.

Disposal of objections and revision.

- [1] 37G. (1) Objections received under section 37E shall be heard and disposed of by such authority as the Local Government may by rule [2] or special order prescribe.
- (2) If any such objection is disallowed, an appeal shall, if filed within one month of such disallowance, lie to the Commissioner.

Submission of valuationroll to Collector and Collector's procedure thereupon.

- 37H. [3] (1) When the valuation-roll has been published and objections have been heard and disposed of, the Settlement Officer shall submit it to the Collector.
- (2) On receipt of such valuation-roll the Collector shall note thereon the total annual value of each estate and of the tenures therein comprised, and the amount of revenue annually payable to the Government on which the deduction specified in section 41 is to be calculated.
- (3) The Collector shall not entertain any objection against the total annual value of any estate or tenure which has been calculated under sub-section (2), except on the ground that an error or omission has been made in calculating the same.

Term of, and Collector's power to reduce. valuation.

- [4]371. (1) The provisions of section 36 with regard to the term of a valuation, and of section 37, with regard to the power of the Collector to reduce a valuation, shall apply to a valuation made under this Chapter.
- [4](2) Where any alteration has been made in the total annual value of any estate or tenure as the result of any decision under sections 40, 104H, 105, 105A or 106 of the Bengal Tenancy Act, 1885,[5] or under Act 8 of sections 61, 85, 86 or 87 of the Choia Nagpur Tenancy Act, 1908,[6] or, 1885. Ben Act 6 under sections 47, 126, 128, 129 or 130 of the Orissa Tenancy Act, of 1908. 1913,[7] or under any other law for the time being in force, a B. & O. Act

[2] For rules made under the former section 37G (1), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[8] This sub-section (1) was substituted for the original sub-section (1) by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act I of 1916), s. 12, printed in Vol. III of this Code.

[4] By s. 13 of the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), printed in Vol. III of this Code, the original s. 37I was renumbered s. 37I (1) and this new sub-section (2) was added.

[5] Printed in Vol. I. [6] Printed, post p. 809. [7] Printed in Vol. III.

^[1] These sections [37E to 37G] were substituted for the original sections 37E to 37G by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 11, printed in Vol. III of this Code.

(Secs. 38-39.)

corresponding correction shall be made in the valuation-roll by the Settlement Officer or by the Collector after its publication:

Provided that no such corrections shall be made after the beginning of the year in which the [1] Board of Revenue have directed that the re-valuation shall take effect, unless the result of such correction is to reduce a valuation.

CHAPTER III.

RATING AND LEVY OF THE [2] CESS.

Rate at to be fixed.

[3]38. The [5] [local cess] for which local cess shall be assessed and levied, how levied in each district as provided in section 6, and (subject to the maximum rate in that section mentioned) at such rate may be determined for such year by the District Board.

[4]38. The [5] [local cess] for Rate at each year shall be assessed and which local levied in each district as provided be levied in section 6, and, subject to the fixed. maximum rate in that section mentioned, at such rate as may be determined for such year by the Committee of such district with the approval of the Commissioner under section 150 or 151, or with the approval of the Lieutenant-Governor section under 153, as the case may be, or at such rate as the Lieutenant-Governor may order under section 153.

39. (Rate at which public works cess shall be levied, how to be fixed.) Rep. by the B. and O. Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), S. 3.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

^[2] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

^[3] This section 38 was substituted for the original section 38 by the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, printed post, p. 522, and in this form applies to all areas in which that Act is in force. S. 38 in this form does not apply to the Sonthal Parganas, but will apply to that district when Ben. Act 3 of 1885 is extended to it.

^[4] Section 38 in this form applies only to the Sonthal Parganas District but will cease to apply to that district when Ben. Act 3 of 1885 is extended to it.

^[5] The words "local cess" were substituted for the words "road cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (g) printed in Vol. III of this Code.

(Sec. 40.)

[1]40. When the rate of [3]Notice showing cess payable trict shall have been determined district shall have been deter-cess payable to be served for any year and published in the mined for any year and published to be on zaminon zamin-Calcutta Gazette[4]* * dar.

district

shall cause the rate so determined to be published by affixing a notification in some conspicuous place in the office of the said Collector, in every Civil Court, in Collector, in every Civil Court, in every police-station, and in the every police-station, and in the office of every Subdivisional Officer office within the district, and

shall cause such rate to be proclaimed by beat of drum throughout the district, and

shall cause to be served on the holder of every estate within the district a notice showing the amount of [8] [local cess] payable amount of [8] [local cess] payable in respect of his estate, and specifying the date from which such[3] [local cess] will take effect:

Provided that it shall not be necessary to serve such notice, necessary to serve such notice when no change has been made in the valuation of the estate or in the valuation of the estate or in the rate of [5] [local cess] since in the rate of [5] [local cess] since the issue of the last notice under the issue of the last notice under this section.

[2]40. When the rate of [local cess] to be levied in any dis- [local cess] to be levied in any showing amount of * in the Calcutta Gazette [4] [as on zamin-, the Collector of the provided in section 1557, the Col-dars. lector of the district

> shall cause the rate so determined to be published by affixing a notification in some conspicuous place in the office of the said of every Subdivisiona! Officer within the district, and

shall cause such rate to be proclaimed by beat of drum throughout the district, and

shall cause to be served on the holder of every estate within the district a notice showing the in respect of his estate, and specifying the date from which such [3] [local cess] will take effect:

Provided that it shall not be when no change has been made this section.

^[1] Section 40 is in force in this form in all areas in which Ben. Act 3 of 1885 is in force. It does not apply to the Sonthal Parganas but will apply to that district when Ben. Act 3 of 1885 is extended to it.

^[2] Section 40 is in force in this form in the Sonthal Parganas but will cease to al ply to that district when Ben. Act 3 of 1885 is extended to it.

^[3] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1)(a), printed in Vol. III of this Code.

[4] The words "as provided in section 155" were repealed by the Bihar and

Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, printed, post, p. 522 in all areas in which that Act is in force. The repeal does not apply to the Sonthal Parganas but will apply to that district also when Ben. Act 3 of 1885 is extended to

^[5] The words "local cess" were substituted for the words "road cess or public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 4(1)(d), printed in Vol. III of this Code.

(Secs. 40A-41.)

[1]40A. Notwithstanding anything in the definitions of "estate" Recovery of and "tenure" in section 4 or elsewhere in this Act contained, the Board tenures in of Revenue [2] may direct that any land (other than the holding of a Government cultivating raiyat) of which the rent or revenue is payable directly to estates. the Government as proprietor thereof, shall, for the purposes of this Part. be deemed to be a tenure and not an estate, and that the Government shall be deemed to be the holder of the estate within which such tenure is included, and thereupon the Collector may recover any sum payable from such tenure under the provisions of this Act, in the same manner and under the same penalties as if the same were arrears of rent or revenue due to him.

41. Except as otherwise in this Act provided,—

- (1) every holder of an estate shall yearly pay to the Collector the Mode of entire amount of the [8] [local cess] calculated on the local cess annual value of the lands comprised in such estate, at the by holder [4] [rate] which may have been determined for such[5] of estate: [cess] for the year as in this Act provided, less a deduction to be calculated at one-half of the said [6] [rate] for every rupee of the revenue entered in the valuation-roll of such estate as payable in respect thereof;
- (2) every holder of a tenure shall yearly pay to the holder of the by holder of estate or tenure within which the land held by him is in-tenure; cluded, the entire amount of the [3] [local cess] calculated on the annual value of the land comprised in his tenure at the [4] [rate] which may have been determined for such [5] [cess] for the year as in this Act provided, less a deduction to be calculated at one-half of the said [6] [rate] for every rupee of the rent payable by him for such tenure;
- (3) every cultivating raiyat shall pay to the person to whom his by cultivatrent is payable one half of the said[3] [local cess] calculating raiyat; ed at the said [7] [rate] upon the rent payable by him, or

[1] Section 40A was inserted by the Bengal Cess (Amendment no. 2), Act, 1881 (Ben. Act 2 of 1881), s. 4, post, p. 447.

[2] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

1916), s. 4 (1) (a), printed in Vol. III of this Code.

[4] The word "rate" was substituted for the words "rate or rates" by s. 4(3),

^[3] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of

^[5] The word "cess" was substituted for the words "cesses respectively" by

^[6] The word "rate" was substituted for the word "rates" by *ibid*, s. 4 (3).
[7] The word "rate" was substituted for the words "rate or rates respectively" by *thid*, s. 4(3)

(Sec. 42.)

upon the annual value ascertained under the provisions of section 24 or 25 of the land held by him.

by holders of chaukidari chakran lands.

[1] Notwithstanding anything hereinbefore in this section contained, all persons to whom chaukidari chakran lands have been transferred under Part II of the Village Chaukidari Act, 1870[2], or the heirs or Ben. Act & assigns of such persons, shall yearly pay to the Collector the entire of 1870. amount of the [3] [local cess] calculated on the annual value of such lands at the [4] [rate] which may have been determined for such [5] [cess] for the year as in this Act provided, less a deduction to be calculated at onehalf of the said [4] [rate] for every rupee of the assessment approved under the said Part as payable in respect of such lands.

Time of payment by holder of an estate;

- 42. (1) Every holder of a revenue-paying estate shall pay the amount of [3] [local cess] due by him in equal instalments on the several days fixed [6] [under the provisions of section 3 of Act 11 of 1859[7], or of any similar Act at the time being in force for the payment of arrears of revenue due in respect of his estate, or, if such revenue be payable in one annual sum, then on the day fixed for the payment of such sum.
- (2) Every holder of a revenue-free estate shall pay the amount of [8] [local cess] due by him in two equal instalments or in one annual payment upon such days or day as shall be for that purpose appointed by any order of the [8] [Board of Revenue].

by tenureholder and raiyat

(3) Every holder of a rent-paying tenure and every cultivating raiyat shall pay the amount of [8] [local cess] due by him in instalments in the proportion of the instalments of rent payable in respect of the tenure or holding of such tenure-holder or raiyat:

Provided that, in cases in which, according to local usage or to the terms of any agreement, no part of such rent falls due before the end of the year on account of which it is payable, the tenure-holder or raiyat

of 1916), s. 4 (1) (a), printed in Vol. III of this Code.

[4] The word "rate" was substituted for the words "rate or rates" by ibid, s. 4 (3).

[5] The word "cess" was substituted for the words "cesses respectively" by

^[1] This paragraph was added to s. 41 by the Bengal Cess (Amendment) Act, 1910

⁽Ben. Act 4 of 1910), s. 9, post, p. 928.

[2] Printed ante, p. 121.

[8] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1

ibid, s. 4 (2).
[6] The words in square brackets in s. 42 (1) were substituted for the words "for the payment of the instalments" by the Bengal Cess (Amendment no. 2) Act, 1881 (Ben. Act 2 of 1881), s. 5, post, p. 447.

[I] The Bengal Land Revenue Sales Act, 1859. It is printed in Vol. 1 of this

^[8] The words "Board of Revenue" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Cess (Amendment) Act, 1916, s. 8, printed in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vcl. III of this Code.

(Secs. 43-44.)

shall pay the amount of [1] [local cess] due by him in two equal instalments upon such days as shall be for that purpose appointed by any order of the [2] [Board of Revenue].

43. In case of partition of an estate being effected under Regulation Distribution 19 of 1814[8], or Bengal Act 8 of 1876[4], or any similar Act, after in case of valuation of such estate and while such valuation remains in force, the partition. total valuation of the original estate shall be distributed proportionately [5] [to the land-revenue] under the order of the Collector over the newlyformed estates, whereupon the newly-formed estates shall, for the purposes of this Act, take the place of the original estate, the liability to pay cess in respect of each newly-formed estate being separate and distinct from the liability to pay cess in respect of any other of such newly-formed estates.

Such separate liability shall take effect from the same date as the separate liability of the newly-formed estates respectively in respect of land-revenue.

The procedure prescribed by sections 34 and 35 shall be followed Procedure to whenever a redistribution of the valuation is made in consequence of when there a partition as mentioned in [6] [this section].

44. (1) When a recorded sharer of a joint revenue-paying estate has Effect of opened a separate account under Act 11 of 1859[7], or under section 70 separate of Bengal Act 7 of 1876[8], or any similar law for the time being in force account for the regulation of the opening and maintaining of such separate 11 of 1859 accounts, he shall be entitled, in regard to the payment and realization or Bengal of[1] [local cess] under this Act, to all the advantages of separate liabili- 1876. ty enjoyed by him under the said Act 11 of 1859[7], and Bengal Act 7 of 1876[8] in regard to the payment and realization of revenue, and shall

partition.

[3] Reg. 19 of 1814 was repealed by the Estates Partition Act, 1876 (Ben. Act

[4] Ben. Act 8 of 1876 has been repealed and re-enacted by the Estates Partition Act, 1897 (Ben. Act 5 of 1897), post, p. 657.

[5] The words in square brackets in s. 43 were inserted by the Bengal Cess (Amendment no. 2) Act, 1881 (Ben. Act 2 of 1881), s. 6, post, p. 447.

[6] The words in square brackets in s. 43 were substituted for the words "the last preceding section" by ibid.

[7] The Bengal Land Revenue Salas Act 1950 14 in manifest of the control of the second section is a square brackets in s. 43 were substituted for the words "the last preceding section" by ibid.

[7] The Bengal Land Revenue Sales Act, 1859. It is printed in Vol. I of this

[8] The Land Registration Act, 1876, ante, p. 237.

^[1] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (7) (a), printed in Vol. III of this Code.

[2] The words "Board of Revenue" were substituted for the words "Lieutenant-Governor" by ibid, s. 8.

As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Sec. 44.)

be entitled to separate assessment and to the issue of separate notices under this Act from the date on which such advantages shall take effect in respect of the demand of Government revenue.

- (2) Whenever any such separate account is opened after the valuation of an estate, and while such valuation remains in force, the Collector shall issue a notice on the holders of the shares severally, in respect of which the accounts are to be kept separately, informing them that, unless any objection is preferred to the Collector within one month of the service of such notice, the amount of the [1] [cess] which the whole estate is liable to pay according to the existing valuation will, from the date on which such separate accounts were opened, be apportioned among such shares severally in proportion to the amount of Government revenue for the payment of which each such share is entered in the separate accounts as being liable. Such notice shall specify such proportionate amount.
- (3) If no such objection be preferred within the time specified, such proportionate amount shall be the amount of the [1] [cess] for which the respective holders of such several shares are primarily liable as mentioned in section 13 of Act 11 of 1859[2], subject, however, to the general responsibility of the holders of the entire estate as mentioned in section 14 of the said Act, if the amount of the [1] [cess] due on account of any such share cannot be recovered as provided in sections 98 and 99 of this Act from the holders of such share.
- (4) If any such objection shall be preferred as aforesaid, the total amount of the [1] [cess] for which the whole estate is liable according to the existing valuation shall be apportioned among the several shares in respect of which such separate accounts are opened in proportion to the annual value of such shares respectively under such rules or special instructions, not being inconsistent with this Act, as may be issued by the Board of Revenue; [3] and the holders of such several shares shall be primarily liable as aforesaid for the payment of the amount of the [1] [cess] so apportioned on their shares respectively.
- [4] [(4a) whenever a recorded sharer of a joint revenue-paying estate applies to the Collector, under section 10 or section 11 of Act 11 of

^[1] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

[2] The Bengal Land Revenue Sales Act, 1859. It is printed in Vol. I of this

^[3] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

^[4] Sub-sections (4a) and (4b) were inserted in section 44 by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 10, post, p. 928.

(Secs. 45-45A.)

1859[1] or section 70 of Bengal Act 7 of 1876, [2] for the opening of a separate account of the land-revenue payable by him, he may include in his application a request for the simultaneous opening of a separate account of the [3] [local cess] payable by him.

- [4] (4b) The Collector may thereupon issue a notice to each of the several sharers of such estate, simultaneously with the notice issued under any of the aforesaid sections, informing him that, unless any objection is preferred to the Collector within six weeks of the service of the notice, the amount of the [5] [cess] which the whole estate is liable to pay will, from the date on which such separate account is opened, be apportioned among such sharers severally, in proportion to the amount of Government revenue for the payment of which each share is entered in the separate account as being liable.]
- [6] (5) Whenever the separate account of the revenue payable in respect of any share or portion of an estate, as mentioned in clause (1) of this section, shall be closed, the provisions of this section shall cease to have effect in respect of such share.
- 45. If any instalment of [7] [local cess] or part thereof payable to the Penalty for Collector shall not be paid within fifteen days from the date on which default of the same becomes due, the amount of such instalment or part thereof instalments. may be recovered at any time within three years after it became due, with interest at the rate of twelve[8] [and a half] per centum per annum calculated from the date on which such instalment became due, and with all costs of recovering the same.

[9]45A. Notwithstanding anything contained in the preceding Power of Collector to sections :--

(1) The Collector may, with the sanction of the Commissioner, by to be an order in writing, declare-

(a) that, where an estate or part of an estate is in possession of mortgagee an usufructuary mortgagee, the cess demand payable for payable to the same shall be paid to the Collector by the usufructuary Collector mortgagee and not by the holder of the estate:

declare cess payable by usufructuary direct by tenureholder.

[1] The Bengal Land Revenue Sales Act, 1859. It is printed in Vol. I of this

^[2] The Land Registration Act, 1876, ante, p. 237.
[3] The words "local cess" were substituted for the words "road cess and public

works cess "by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act I of 1916), s. 4 (I) (a), printed in Vol. III of this Code.

[4] Sub-sections (4a) and (4b) were inserted in s. 44 by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 10, post, p. 928.

[5] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code. Vol. III of this Code.

Vol. III of this Code.

[6] Sub-section (5) was added to s. 44, by the Bengal Cess (Amendment no. 2) Act, 1881 (Ben. Act 2 of 1881), s. 7, post, p. 448.

[7] The words "local cess" were substituted for the words "road cess or public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 4 (1) (d), printed in Vol. III of this Code.

[8] The words in square brackets in s. 45 were inserted by ibid, s. 8.

[9] This s. 45A was inserted by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 14, printed in Vol. III of this Code.

(Sec. 46.)

- (b) that any holder of a tenure shall pay the cess payable by him (including arrears due, if any), direct to the Collector instead of to the holder of the estate.
- (2) The Collector may, with the sanction of the Commissioner, by an order in writing at any time, revoke such declaration:

Provided that no such declaration or revocation shall be made until notice thereof has been given to the holder and the usufructuary mortgagee of the estate affected, or to the holder of the estate and the holder of the tenure affected, as the case may be, and their objections, if any, duly considered:

Provided, also, that no such declaration shall relieve the holder of an estate from his ultimate liability to pay the cess demand and the Collector shall always be at liberty to recover it from him in default of recovery from the usufructuary mortgagee or holder of a tenure as the case may be.

(3) When a declaration has been made under sub-section (1) the Collector may recover the cess demand in the same manner and under the same penalties as if the said demand were payable by the holder of an estate and the amount payable shall be deducted from the amount payable by the holder of the estate under section 41.

With permission of the Board of Revenue. Collector may keep separate account of holders of revenue-free estates.

- **46.** (1) In any district to which the [1] [Board of Revenue] may specially order[2] that the provisions of this section shall be extended, it shall be lawful for the Collector to keep a separate account in respect of the amount of [8] [cess] payable and paid by any holder of a revenuefree estate who is recorded in Part I of the Collector's general register of revenue-free lands as proprietor or manager of any specified share or by registered interest in any revenue-free property.
 - (2) Such separate account shall be opened and kept under such rules as to the levy of fees and other matters, and subject to such conditions and in such manner, as the Board of Revenue may from time to time prescribe; [4] [and the Collector, if he becomes aware that any separate

^[1] The words "Board of Revenue" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 8, printed in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

^[2] For orders made under s. 46 (1), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[3] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2) printed in Vol. III of this Code.

^[4] The words in square brackets in s. 46 (2) were substituted for the words "and the Board of Revenue may at any time order that any separate account which has been so opened shall be closed from such time as they may direct, and no longer kept as a separate account" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 11, post, p. 928.

(Secs. 47-49.)

account opened under sub-section (1) does not represent existing facts, may, after service of a notice on the recorded proprietor or manager, and after hearing any objection which may be preferred within six weeks of such service, close the account.

- (3) As long as any separate account shall remain open as provided in the [1] [preceding clause], and no longer, the joint liability of the holders of such revenue-free estate for payment of the entire amount payable in respect of such estate shall cease; and the Collector shall recover the amount of cess or other demand due in respect of each share or interest for which an account has been so separately kept from the holder or holders of such share or interest only; and, if the Collector shall think fit to proceed under section 99, he shall take action under that section against the share or interest only in respect of which the sum demanded is due and the rents thereof[2].
- 47. Every holder of an estate or tenure to whom any sum may be Recovery by payable under the provisions of this Act may recover the same with holders of interest at the rate of twelve and a half per centum per annum in the tenures. same manner and under the same penalties as if the same were arrears of rent due to him.

48. Any shareholder in an estate or tenure who may have paid the Recovery [3] [local cess] payable in respect of such estate or tenure, or any part from co-sharethereof in excess of the amount proportionate to his own interest in such holders. estate or tenure, may recover from his co-sharers such sums as he may have paid on account of their respective shares and interests, in the same manner and under similar penalties, or may take credit for such sums in any adjustment of accounts between himself and his co-sharers.

49. Whenever any shareholder in an estate who is recorded in the Recovery by general register of revenue-paying and revenue-free lands maintained by recorded shareholders the Collector, or whenever any shareholder in an estate the extent of from their whose share or interest in such estate is recorded in any other register co-shares by kept up by the Collector of lands paying revenue or rent to the Collector process. direct, shall have paid the [3] [local cess] payable in respect of such estate, or any part thereof in excess of the amount proportionate to his own interest in such estate, he may, within [4] [six weeks] of such payment being made, move the Collector to make a certificate as

^[1] The words in square brackets in s. 46 (3) were substituted for the words "preceding section" by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881),

ceding section "by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 9, post, p. 448.

[2] As to the effect of opening a separate account under this section, see also the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), s. 71, post, p. 477.

[3] The words "local cess" were substituted for the words "road cess or public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (d), printed in Vol. III of this Code.

[4] The words "six weeks" were substituted for the words "fifteen days" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 12, post, p. 928.

(Sec. 50.)

provided by any law[1] for the time being in force for the recovery of public demands, specifying the amount which has been paid in by such shareholder as cess in respect of the recorded share or interest of any other shareholder in the estate;

and thereupon such Collector may, if he think fit, make such certificate, and such certificate shall have the same effect as a certificate made for the recovery of a public demand[1]; and the same notices shall be issued and the same proceedings may be taken thereon by the Collector as in case of such certificate:

Provided that the person in whose favour the certificate has been made shall be deemed to be the decree-holder for the sum mentioned in the certificate; and all proceedings taken by the Collector for the recovery of the sums mentioned in the certificate shall be taken at the instance of the person in whose favour the certificate has been made, and at his cost, and on his responsibility, and not otherwise:

Provided also that, if any person against whom such certificate has been made shall object that the amount of the [2] cess for the recovery of which the certificate has been made is greater than the amount which the applicant for the certificate would recover from such person in a Civil Court as being equitably payable in respect of such person's share or interest in the estate, and if in the opinion of the Collector there is probable ground for such objection, the Collector may, if he see fit, cancel such certificate, and leave the applicant to his remedy in the Civil Court.

CHAPTER IV.

VALUATION AND ASSESSMENT OF LANDS HELD RENT-FREE, AND PAYMENT AND RECOVERY OF CESS IN RESPECT THEREOF.

Rent-free lands in what estates or tenures to be included for the purposes of this Act.

50. All lands held without payment of rent other than lands mentioned in section 33, and other than estates entered on the general register of revenue-free lands of the district, shall, for the purposes of this Act, be deemed to form a part of any tenure within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any tenure, then to form a part of any estate within the local boundaries of which they are contained; and if they are not contained within the local boundaries of any estate, then to form a part of the estate in which they were included at the original settlement of such estate; and if there be any doubt as to the estate in

^[1] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), in Vol. III of this Code.

^[2] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

(Secs. 51-52A.)

which they were so included, then to form a part of such conterminous estate as the Collector, in whose district such conterminous estate is situate, shall by an order under his seal appoint.

- 51. Every holder of an estate or tenure who is required by this Act Holders of to submit a return in the form in Schedule A contained shall be bound estates and tenures to enter in such return all lands of the nature of those specified in section bound to 50 according to the tenor thereof; and shall be bound to pay[1] [local return rent-free lands cess] on the annual value of such lands at one-half of the [rate][2] fixed and to under this Act for the levy of such[3][cess] in the district generally for half rates the year.
- 52. Whenever any lands held rent-free shall have been included in Notice and the return of any estate or tenure as provided in the last preceding extracts of section, the Collector shall, on publication of the valuation-roll of such roll estate or tenure as provided in section 35, cause to be published a notice to be in the form in Schedule D contained, to which notice shall be annexed Collector in such extracts from the valuation-roll of such estate or tenure as relate respect of to such lands.

Such publication may be lawfully made by affixing one copy of such notice and extracts at some conspicuous place in every village within which any such lands are situate,

by depositing another copy of the same at any police-station, registration-office, or other Government office in the neighbourhood for the inspection of all concerned,

and by proclamation as herein next provided.

The proclamation shall be made by beat of drum throughout every such village, and shall be to the effect that such extracts have been so affixed and deposited, and that the owners and holders of such lands are required to inform themselves, by inspection of such extracts, of the valuation put upon their lands, and to pay yearly to the holder of the estate or tenure in the return of which such lands are included the [4] [cess] which shall be payable in respect of such lands under the provisions of this Act.

[5] 52A. Whenever any notice has been duly published under section Certificate 52, the Collector shall sign a certificate to that effect, and such certificate of publication of shall be conclusive proof that the publication has been duly made.

for such included therein. such rentfree lands.

notices under section 52.

^[1] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of

^{1916),} s. 4 (1) (a), in Vol. III of this Code.

[2] The word "rate" was substituted for the word "rates' by *ibid*, s. 4 (3).

[3] The word "cess" was substituted for the words "cesses respectively" by

^[4] The word "cess" was substituted for the word "cesses" by ihid, s. 4 (2). [5] Section 52A was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 13, post, p. 928.

(Secs. 53-54.)

Holder of rent-free land may object to valuation.

53. Within a reasonable time not exceeding thirty days after the issue of any process for the recovery of any sum due from him as cess under this Chapter, the owner, holder or occupier of any such land may make before the Collector an objection to the valuation of his land as entered in the valuation-roll so published, and on such objection being made, the Collector shall, by such ways and means as to him shall seem expedient, ascertain and fix the annual value of the land in the possession of such owner, holder or occupier, and may alter such roll accordingly, and shall give notice of any such alteration to the holder of the estate or tenure to which such roll relates:

Provided that nothing in this section shall be taken to authorize the Collector to alter any return so as to show any area of land as held rentfree which the maker of such return can show to be accounted for by him in the return as rent-paying land.

Notice to be published by holders of estate in certain cases.

- 54. In the following cases, that is to say:—
 - (1) whenever a new valuation or re-valuation takes effect in any district or part of a district;
 - (2) whenever the rate fixed for the levy of the [1][local cess] in any year is changed from the rate at which such cess was levied in the preceding year; and
 - (3) whenever the dates fixed by the [2] [Board of Revenue] under section 57 for payment of instalments of the [3] [cess] by holders of rent-free land are changed,

the holder of every estate or tenure to whom any [4] [cess is] payable in respect of lands held free of rent shall cause a notice to be published in every village in which any such lands are situate, informing all concerned of the rate which has been fixed for the levy of such [5][cess]; and requiring every owner and holder of any such land of which the [4] [cess is] payable to the person who causes the notice to be published to pay the amount of the [8] [cess] specified in such notice as it falls due, until a similar notice of change of the amount shall be given.

Such notice shall contain the following information in respect of each tenure and holding of rent-free land which is entered separately in

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

[3] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

[4] The words "cess is" were substituted for the words "cesses are" by ibid, s. 15.

[5] The word "cess" was substituted for the words "cesses respectively" by ibid, s. 4(2).

Lil ine words "local cess" were substituted for the words "road cess or of the public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (I) (e) printed in Vol. III of this Code.

[2] The words "Board of Revenue" were substituted for the words "Lieutenant-Governor," by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (I), post, p. 927.

(Secs. 55-56.)

the Collector's valuation-roll:-

- [1] (1) a statement of the quantity, or a description, of the land, as entered in the Collector's valuation-roll;
- (2) the name of the owner, holder or occupier of such lands, if known;
- (3) the annual value of such land as entered in the Collector's valuation-roll;
- (4) the rate on each rupee of the annual value which has been fixed under the Act for the levy of the [2][local cess] for the year;
- (5) the amount of the [8] [cess] payable in respect of each tenure or holding, calculated at such [4][rate]; and
- (6) the dates fixed by the [5] Board of Revenue] under section 57 for the payment of each instalment together with the amount of each instalment.
- 55. Publication of the notice above-mentioned may be lawfully made Mode of by affixing one copy of the same at some conspicuous place in every publication. village in which any such land is situate;

by depositing another copy thereof to be available for general inspection at any mal-cutcherry of the estate or tenure in which such land is included, or at any other convenient place in the neighbourhood;

and by proclamation as herein next provided.

The proclamation shall be made by beat of drum throughout such village, and shall be to the effect that such notice has been so affixed and so deposited, that it is open to inspection at the mal-cutcherry or other convenient place as above-mentioned, and that every owner and holder of rent-free land is required to inform himself of the contents of such notice and to pay the amount of the $\lceil 3 \rceil \lceil \cos \rceil$ due by him accordingly.

56. After publication of the extracts from the roll as provided in Owner of section 52, and in cases in which publication of the notice mentioned land bound in section 54 is required, after publication of such notice, and not other to pay cess

^[1] This clause (1) was substituted for the original clause by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 14, post, p. 928.

^[2] The words "local cess" were substituted for the words "road cess and public works cess respectively" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (f), printed in Vol. III of this Code.

^[3] The word "cess" was substituted for the word "cesses" by ibid, s. 4 (2).

^[4] The word "rate" was substituted for the word "rates" by s. 4 (3) of the

^[5] The words "Board of Revenue" in section 54 were substituted for the words "Lieutenant-Governor" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), post, p. 927.

As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of the Code.

(Secs. 57-59.)

wise, every owner and holder of any rent-free land included in such extracts, and every person in receipt of the rents and profits or in possession and enjoyment of such land, shall be bound to pay year by year to the holder of the estate or tenure in the return of which such land has been included the amount of the [1][local cess] which may thereafter become due to such holder, calculated on the annual value of such land as entered in such extracts, or on any other annual value which may have been determined by the Collector under section 53, at the full [2] [rate] which may have been fixed under this Act for the levy of such [3] [cess] in the district generally for the year.

Instalments

57. The payment of the [4] [cess] for each year by the holder of any to be nixed by [6] Board land which is held rent-free shall be made by two equal instalments, or of Revenue in one payment, upon such days or day as shall be for that purpose fixed[5] by the [6] [Board of Revenue].

If instalments not paid within a month, double the

58. When an instalment of the [4] [cess] due on any rent-free land is not paid to the holder of the estate or tenure to whom it is due within one month of the date on which such instalment is payable, such holder shall be entitled to recover a sum equal to double the amount of such amount may instalment due to him under sections 56 and 57, with interest on such sum calculated at the rate of twelve and a half per centum per annum from the date on which such instalment was payable, and with all costs of suit:

> Provided that such holder shall have paid to the Collector all sums due to such Collector up to date in respect of [1][local cess], and not otherwise.

Holders of may send in rent-free lands.

59. If the holder of any estate or tenure shall have omitted to enter estates, etc., in his return (whether such return was made under Bengal Act 10 supplement of 1871[7], or under this Act), any rent-free land which he was ary returns bound to enter in such return, such holder may at any time after the in respect of

1* The word cess was substituted for the word cesses by 101a.

[5] For a list of orders made under section 57 for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[6] The words "Board of Revenue" in s. 57, were substituted for the words "Lieutenant-Governor" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 5 (1), post, p. 927.

As to the present constitution and powers of the Board of Revenue, see now the Piles and Orders Revenue Act, 1913 (B. and O. Act, 1 of 1913) in Vol. [11]

Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code. [7] Ben. Act 10 of 1871 has been repealed by this Act-see s. 3. ante, 371.

^[1] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (a), printed in Vol. III of this Code.

[2] The word "rate" was substituted for the words "rate or rates" by ibid,

<sup>3. 4 (3).

[3]</sup> The word "cess" was substituted for the words "cesses respectively" by ibid, s. 4 (2).

[4] The word "cess" was substituted for the word "cesses" by ibid.

(Secs. 60-63.)

passing of this Act give in to the Collector a supplementary return showing the necessary particulars in respect of the land so omitted in the form given in Part IV of Schedule A, and shall thereupon pay to the Collector the amount of the [1] [cess] which would have been payable by him to such Collector in respect of such land for the three years next preceding, or for any shorter period which may have elapsed since the estate or tenure was last valued.

60. Such supplementary return shall to all intents and purposes Effect of have the same effect as a return duly made under the provisions of supplementsection 51; and sections 51 to 56 (both inclusive) shall be applicable to and in respect of any rent-free land included in such supplementary return.

61. The provisions of sections 57 and 58 shall be applicable to every sections amount which, as provided in section 56, may become payable by the applicable to owner and holder of any such rent-free land to the holder of any such payable by estate or tenure after the fulfilment of the requirements in sections 52, 53 owner, etc., and 54 contained.

land.

62. The provisions of section 58 shall not be applicable to any such Section 58 amount which may have become so payable under the provisions of not applicable to Bengal Act 10 of 1871[2], or of this Act before the fulfilment of the such requirements of the sections 52, 53 and 54; but, when any instalment of amounts cess which may have become payable before the fulfilment of such 52, 53 and requirements has not been paid to the holder of such estate or tenure 54 are complied on the date on which such instalment was payable the holder of such complied on the date on which such instalment was payable, the holder of such with. estate or tenure may recover the amount of such instalment, together with interest at the rate of twelve and a half per centum per armum on such amount, and with all costs of suit:

Provided that no holder of an estate or tenure shall recover any amount under the provisions of this section unless he has paid to the Collector all sums which became payable by him to such Collector on account of [3] [local cess] at any date within the year in which the amount sought to be recovered became payable to such holder of an estate or tenure.

63. As soon as the said requirements shall have been fulfilled in Owner of respect of any such land which is included in any such supplementary rent-free land liable return, every owner and holder of such land and every person in receipt to pay cess of the rents and profits, or in possession and enjoyment of such land; in future. shall be bound to pay the amount of the [3] [local cess] which may

6 L.D.

^[1] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed

in Vol. III of this Code.

[2] Bengal Act 10 of 1871 has been repealed by this Act—see s. 3, ante, 371.

[3] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (a), printed in Vol. III of this Code.

(Secs. 64-64B.)

thereafter become due on such land to the holder of the estate or tenure, in the supplementary return of which such land has been included. Sections 56 and 57 and 58 shall be applicable to the [1][cess] so payable.

Additional returns of rent-free in return under Bengal Act 10 of 1871 may be made.

64. (1) Every holder of an estate or tenure who has included any rent-free lands in any return made to the Collector in respect of his land entered estate or tenure under the provisions of the Bengal Act 10 of 1871[2], and has paid to the Collector any cess payable under the said Act, or under the Bengal Act 2 of 1877[2], in respect of the said rent-free lands, may at any time after the commencement of this Act give in to such Collector an additional return in the form given in Part IV of Schedule A.

Additional return to be deemed supplementary return.

(2) Such additional return shall be deemed to be a supplementary return within the meaning of section 59, and from the date of the inclusion of any such lands in such additional return the same consequences shall ensue, and the same rights and obligations accrue to the Collector and to the holder of such estate or tenure, and the same liabilities shall attach to the owner, holder and occupier of such lands, as would have attached to them respectively if such lands had been included in a supplementary return given in under section 59.

Holders of how to recover of rent-free lands.

[3]64A. All sums due to the holder of any estate or tenure under estates, etc., the provisions of this Chapter, in respect of any land held rent-free, may be recovered by such holder from any owner or holder of such rent-free from holders land, or from any occupier of the same, by any means and any process by which the amount might be recovered if it were due on account of rent of a transferable tenure or holding, and subject to the same rules as to limitation:

> Provided that, if any such objection as is mentioned in section 53 has been made before the Collector, no proceedings shall be commenced, and no proceedings which have been commenced shall be continued, for recovery of cess in respect of the lands which are the subject of such objection, until such objection shall have been disposed of by the Collector.

Owner, holder or occupier of rent-free lands may be sued. Decree

[3]64B. In every suit for the recovery of any such sum, the person to whom the sum is due may proceed at his option either against the owner or holder of the rent-free land in respect of which such amount is due, or against the occupier thereof; and any decree obtained in such suit against any occupier of such land shall have the same effect and

^[1] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

^[2] Ben. Acts 10 of 1871 and 2 of 1877 have been repealed by this Act-see s. 3,

ante, p. 371.
[8] Sections 64A and 64B were inserted by the Bengal Cess (Amendment no. 1) Act, 1881 (7 of 1881), and are to be deemed to have been inserted on and from the date on which Ben. Act 9 of 1880 came into force—see Act 7 of 1881, s. 1, in Vol. I. of this Code.

(Secs. 65-67.)

be followed by the same consequences in respect of the execution of against occupier such decree against the owner or holder of such land, and in respect of tantamount the sale of such land in such execution, as if the suit had been brought to decree against and the decree given against such owner or holder of such land, but owner. shall have effect against such occupier personally so long only as he remains in occupation of such land, and no longer.

65. Whenever any occupier of land which is held rent-free by the Occupier owner thereof shall have paid any sum as cess due in respect of such may deduct cess paid land to any holder of an estate or tenure to whom such cess is payable, from rent. such occupier shall be entitled to deduct the sum so paid by him from the rent next thereafter payable by him to the owner of such land, until such sum is fully adjusted.

66. Notwithstanding anything in this Chapter contained, the Notice to be Collector may at any time cause a notice as mentioned in section 16 to served on holder of be served on the holder of any rent-free land which he shall consider rent-free not to have been entered in the return of any estate or tenure in which land requiresuch land ought to have been included under the provisions of lodge return. section 51.

Such notice shall require the holder of such land to lodge at the office of the said Collector a return in the form in Schedule A contained in respect of such land;

and on service of such notice the provisions of this Chapter shall no longer apply to such lands; but the same consequences shall ensue and the same liabilities shall attach to the holder of such land as would have ensued and would have attached if such lands had constituted a revenue-free estate.

If the Collector has reason to believe that any land in respect of which he determines to serve such notice has been included in the return of any estate or tenure, he shall give notice of his intention to the holder of such estate or tenure, and shall alter such return as may be requisite, and shall correct the valuation and assessment of such estate or tenure as may be required.

67. If within one year of the commencement of this Act no notice If no notice has been served as mentioned in section 66 on the holder of any rent-free served, such holder bound iand requiring him to lodge a return in the office of the Collector, and to notify if such land has not been included in any extracts from the returns of omission to estates and tenures published by the Collector under section 52 or other similar section, the holder of such rent-free land shall be bound within one month of the expiration of such year to give information of such omission to the Collector, together with a description of the said land, a specification of the village or villages within which it is situate, the area in each village, and the amount of rent payable to him thereupon:

Provided that no holder of rent-free land who at any time after the expiration of the time prescribed shall of his own motion and otherwise

(Secs. 68-71.)

than after the issue of any notice by the Collector in respect of his lands give such information to the Collector shall be liable to prosecution for omitting to give such information within the prescribed time.

Collector thereupon may require such holder to make return.

68. On receipt of such information, whether within the time prescribed or after the expiration thereof, the Collector may, by an order in writing, require such owner or holder to make a return of his land in the form in Schedule A contained, or, if the gross rental of such land does not exceed one hundred rupees, may order that such land shall be summarily valued under section 27 or section 28, and may proceed to make such valuation.

Order to have effect of notice.

Liability of such holder to pay arrears of cess.

69. Every order made by a Collector under the last preceding section shall have the same effect and be followed by the same consequences as the issue of a notice by the Collector under section 66.

70. As soon as any rent-free land which had not previously been included in the valuation of any estate or tenure, has been valued by the Collector after the issue of a notice as provided in section 66, or after an order made under section 68, the holder of such land shall become liable to pay to the Collector the [1][local cess] due on such land, in accordance with such valuation, for the three years last preceding such valuation, at the full[2] rate at which such [3] [cess was] levied for each such year in the district generally, together with interest calculated at twelve and a half per centum per annum on each instalment from the date on which such instalment would have been payable if such valuation had been in force.

Such holder is not liable to pay[4]cess except to Collector or

71. No owner or holder of rent-free land on whom a notice has been served by the Collector under section 66, or in respect of whose land an order has been made by the Collector under section 68, shall be liable to have the land to which such notice or order refers included in any his Deputy. return of an estate or tenure, or to pay any amount as [4] [local cess] otherwise than to the Collector or to some person appointed by him in that behalf, unless, on a revaluation of any estate or tenure being made, the Collector shall by an order in writing direct that for the future such land shall be included within such estate or tenure for the purposes of this Act;

and upon such order being made, the provisions of this Chapter, in so far as they are applicable, shall apply to the assessment and payment of [5][local cess] in respect of such land.

^[1] The words "local cess" were substituted for the words "road cess and the public words "local cess were statisticated for the words road cess and the public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916, (B. and O. Act 1 of 1916), s. 4 (1)(b), printed in Vol. III of this Code.

[2] The word "rate" was substituted for the word "rates" by s. 4 (3) ibid.

[3] The words "cess was "were substituted for the words "cesses were respectively" by ibid, s. 16.

^[4] The words "local cess" were substituted for the words "road cess or public works cess" by *ibid*, s. 4 (1) (d).

[5] The words "local cess" were substituted for the words "road cess and public works cess" by *ibid*, s. 4 (1) (a).

(Secs. 72-73.)

CHAPTER V.

VALUATION, ASSESSMENT AND LEVY OF [1] CESS ON MINES, RAILWAYS, AND OTHER IMMOVABLE PROPERTY.

72. On the commencement of this Act in any district, and Notice to thereafter before the close of each year, the Collector of the district shall profits. cause a notice to be served upon the owner, chief agent, manager or occupier of every mine, quarry, tramway, railway and other immovable property not included within the provisions of Chapter II, and not being one of the tramways or railways mentioned in section 8; such notice shall be in the form in Schedule E contained, and shall require such owner, chief agent, manager or occupier to lodge in the office of such Collector within two months a return of the net annual profits of such property, calculated on the average of the annual net profits thereof for the last three years for which accounts have been made up.

Such Collector may in his discretion extend the time allowed for lodging such return.

[2]72A. (1) Any owner, chief agent, manager or occupier who, Penalty for without sufficient cause being shown to the satisfaction of the Collector, omitting to refuses or omits to lodge the required return in the office of the Collector return. within two months from the date of the service upon him of a notice under section 72, or within any extended time which may have been allowed by the Collector for lodging such return, shall be liable to a fine which may extend to fifty rupees for every day after expiration of such time or extended time until such return is furnished, or until the annual net profits of the property in respect of which the notice has been served shall have been otherwise ascertained and determined by the Collector as hereinafter provided.

(2) The amount of such fine accruing due from time to time may be levied by the Collector as provided in section 98 or section 99, and the fact of an appeal against such fine being pending shall not avail to prevent the levy of any such fine pending the disposal of the appeal, unless the Commissioner otherwise directs.

(3) Whenever the amount levied in respect of any such fine exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner; and no further levy for such default shall be made otherwise than by authority of the Commissioner.

73. Whenever any property assessable under this Chapter lies in When two or more districts, the notice to furnish a return under section 72 property lies shall be served on the owner, chief agent, manager or occupier of such districts.

Act 4 of 1910), s. 15, post, p. 928.

^[1] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

[2] Section 72A was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben.

(Secs. 74-79.)

property by or through the Collector of the district in which such owner, chief agent, manager or occupier may reside or have his chief place of business, and one return for the whole of such property shall suffice.

When property is partly in and partly outside Bengal.

74. Whenever any property assessable under this Chapter lies partly within and partly outside the territories administered by the Lieutenant Governor of Bengal^[1], the return furnished as required by section 72 shall state the total annual net profits calculated as aforesaid accruing from such property, and also the proportion of such profits which may reasonably be calculated to accrue in the territories administered by the Lieutenant-Governor of Bengal.[1]

If return not incorrect, Collector to make valuation.

75. If such return be not furnished within the period of two months furnished or from the date on which such notice was served, or within any extended time allowed by the Collector of the district, or if such Collector shall deem that any return made in pursuance of such notice is untrue or incorrect, such Collector shall proceed to ascertain and determine by such ways or means as to him shall seem expedient the annual net profits of such property calculated as aforesaid.

Valuation on perty.

76. If such Collector be unable to ascertain the annual net profits value of pro- as aforesaid of any property assessable under this Chapter, he may, by such ways or means as to him shall seem expedient, ascertain and determine the value of such property, and shall thereupon determine six per centum on such value to be the annual net profits thereon.

Cost of valuation from whom to be recovered.

77. The expenses incurred in making any valuation under section 75 or section 76 may be recovered together with all costs of the recovery thereof as provided in section 98 from the person who was bound to make such return or who made the incorrect return.

Notice of valuation.

78. So soon as such Collector shall have ascertained and determined the annual net profits as aforesaid of any such property, he shall cause to be served upon the owner, chief agent, manager or occupier of such property a notice informing him of the amount of the annual net profits so ascertained and determined by him.

Valuations under this Chapter to be annual.

79. New valuations under this Chapter shall be made by the Collector of the district every year, and such Collector may for that purpose cause such notices to be issued and served, and such returns to be made, and shall have such powers and authorities as are in this Part mentioned and conferred:

Declaration of annual net profits by owner for five years.

Provided that, whenever any return made under section 72 shall be accepted by the Collector for any year, the owner, chief agent, manager or occupier of such property may, if he see fit, declare in writing at the time of such acceptance that the annual net profits set

^[1] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 80-82.)

forth in such return may, for the purposes of this Act, be deemed to be the annual net profits for each of the five years then next ensuing;

and, if the Collector of the district shall agree to accept such Effect of declaration, no new valuation shall be made of such property until the acceptance by Collector of declaration

80. When the rate of [1][local cess] to be levied in the district upon Notice of property assessable under this Chapter shall have been determined for rate of cess any year as in this Act provided, the Collector of the district shall payments. cause to be served on the owner, chief agent, manager or occupier of every such property a notice showing the amount of [2] [local cess] payable in respect of such property, and specifying the date from which such [3] [cess] shall take effect.

And such amount shall be payable by such owner, chief agent, manager or occupier to such Collector in two equal instalments [4][on such dates as the Board may direct not being less than six months and nine months, respectively, after the date fixed under section 11 for the commencement of the year].

81. In any case in which the occupier of such property is a different Recovery by person from the owner, and has paid in excess of half of the sum due occupier or owner who as [1][local cess] on account of any instalment, such occupier shall be has paid in entitled to deduct the amount of such excess from the next and subse-excess. quent instalments of rent payable in respect of such property; and every owner who has paid in excess of half of such sum due shall be entitled to recover the amount of such excess from the occupier:

Provided that in no case shall an occupier deduct from his annual rent more than half of the rate of the [1][local cess] on every rupee thereof.

[6]82. The total of the [8] [cess] How distri-[5]82. The total of the $[^3]$ [cess] payable in respect of property payable in respect of property in assessable under this Chapter, assessable under this Chapter, different

expiry of six months, the second on the expiry of nine months, after the date fixed as

hereinbefore provided for the commencement of the year" by ibid, s. 17. [6] Section 82 is in force in this form in all areas in Bihar and Orissa in which Ben. Act 3 of 1885 is in force. It does not apply to the Sonthal Parganas but will be in force in that district when Ben. Act 3 of 1885 is extended to it.

[6] Section 82 is in force in this form in the Sonthal Parganas. It will cease to be in force in that district whyn Ben. Act 3 of 1885 is extended to it. The differences in the section as in force in the Sonthal Parganas and elsewhere lie in the words printed in italica.

^[1] The words "local cess" were substituted for the words "road cess and public works cess "by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (a), printed in Vol. III of this Code.

[2] The words "local cess" were substituted for the words "road cess and public works cess respectively" by *ibid*, s. 4 (1) (f).

[3] The word "cess" was substituted for the word "cesses" by *ibid*, s. 4 (2).

[4] These words in square brackets were substituted for the words "the first on the complete of six months, the abound on the arrive of rive months, after the detail of a complete of six months, the abound on the arrive of rive months, after the detail of a complete of six months.

(Sec. 83.)

any pro-

owned or occupied by the same owned or occupied by the same person in two or more districts, person in two or more districts, shall be payable to the Collector shall be payable to the Collector of the district where the owner, chief agent, manager or occupier may reside or have his chief place of business, and shall be by him transmitted to the Collectors of other districts in the proportion of other districts in the proporin which the [1] [District Funds] of such districts shall be severally entitled thereto, as provided in the section next following.

perty assessable under this Chapter lies in two or more districts, the [4] [Board of Revenue] shall from time to time determine, out of the total annual net profits stated in such profits accruing in the [5] [territories subject to the Lieutenant-Governor] and ascertained in Lieutenant-Governor]

said districts respectively, and the

due thereon

[2]83. Whenever

of the district where the owner. chief agent, manager or occupier may reside or have his chief place of business, and shall be by him transmitted to the Collectors tion in which the Committees of such districts shall be severally entitled thereto, as provided in the section next following.

[3]83. Whenever any property Determinassessable under this Chapter lies ation of proin two or more districts, the profits when [4] [Board of Revenue] shall from property in time to time determine, out of the districts. total annual net profits stated in the return, or in the valuation of the return, or in the valuation of such profits accruing in the [5] [territories subject to and any manner as aforesaid, the pro- certained in any manner as aforeportions in which such property said, the proportions in which shall be assessed in each of the such property shall be assessed in each of the said districts resproportion of the [6][local cess] pectively, and the proportion of which shall be the [6][local cess] due thereon

s. 1 (I) (g).

Determination of proportion of profits when pro-perty in different districts.

^[1] For the word "Committees" in the original section the words "District Road Funds" were substituted by Ben. Act 3 of 1885, s. 2 and Sch. II, post, p. 592 and the words "District Funds" were substituted for the words "District Road Funds" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.

[2] Section 83 is in force in this form in all areas in Bihar and Orissa in which Road Act 3 of 1885 is in force. It does not apply to the Southel Payments but will be

Ben. Act 3 of 1885 is in force. It does not apply to the Sonthal Parganas but will be in force in that district when Ben. Act 3 of 1885 is extended to it.

^[3] Section 83 is in force in this form in the Sonthal Parganas only. It will cease to be in force in that district when Ben. Act 3 of 1885 is extended to it.

The difference in the section as in force in the Sonthal Parganas and elsewhere lies in the words printed in italics.

^[4] The words "Board of Revenue" were substituted for the words "Lieutenant Governor" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 8, printed in Vol. III of this Code.

As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

[5] The words "territories subject to the Lieutenant-Governor" were substituted for the words "territories subject to him" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 18, printed in Vol. III of this Code.

[6] The words "local cess" were substituted for the words "road cess" by ibid,

(Secs. 84-87.)

assigned to the [1] District Fund which shall be assigned to the of each district concerned." Committee of each district concerned.

84. Every notice under this Chapter may be served—

Service of (a) by leaving it at the registered office (if any) of such owner, notices under this chief agent, manager or occupier aforesaid; or Chapter.

(b) by sending it by post in a letter addressed to such owner, chief agent, manager or occupier at his office, or, if he have more offices than one, at his principal office; or

(c) by giving it to such owner, chief agent, manager or occupier.

CHAPTER VI.

Special Provisions for Orissa [and Midnapore]

- 85. In any district of the Province of Orissa, [and in the district Collectors in of Midnapore], the Collector may at any time, with the sanction of the Orissa [and Midnapore] Commissioner, order that any revenue-free estate not exceeding five may order hundred standard bighas in extent, of which the valuation shall have certain been completed, shall, for the purpose of payment and levy of the estates to be [2] [cess] due in respect thereof, be annexed to any other estate within annexed to the ambit of which it is situate or which it adjoins.
- **36.** Notice of such order shall be given by the Collector to the Notice to be holder of the estate to which such revenue-free estate is ordered to be given to holder of so annexed, and to such notice shall be appended a copy of the valua- estate to tion-roll of the said revenue-free estate, and thereupon such holder which such revenue-free shall be liable to pay annually to the Collector, on account of such estate is revenue-free estate, [3][local cess] at one-half of the [4][rate]which annexed. may be fixed under this Act for the levy of the said [5] [cess] in the district generally for each year.
- 87. Notice of such order shall also be given by the Collector to the Notice to be holder of the said revenue-free estate, and such notice shall require given to bim to pay annually, and he shall thereupon be bound to pay to the holder of revenue-free holder of such other estate [3] [local cess] at the full [4] [rate] which estate.

for purposes of payment

^[1] For the word "Committee" in the original section the words "District Road Fund" were substituted by Ben. Act 3 of 1885, s. 2 and Sch. II, post, p. 592 and the words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1), printed in Vol. III of this Code.

^[2] The word "cess" was substituted for the word "cesses" by ibid, s. 4 (2).

^[3] The words "local cess" were substituted for the words "road cess and public works cess " by ibid, s. 4 (1) (a).

^[4] The word "rate" was substituted for the word "rates" by ibid, s. 4 (3).

^[5] The word "cess" was substituted for the words "cesses respectively" by ibid s. 4 (2).

(Secs. 88-91.)

may be fixed under this Act for the levy for the said [1][cess] in the district generally for each year.

Cess payable estate in such instalments as Board of Revenue may direct.

88. Such [2][cess] shall be so payable by the holder of the said by holder of the said revenue-free revenue-free estates in two equal instalments, on such dates as may be fixed by the [3] [Board of Revenue] under section 42 for the payment of cess by the holders of revenue-free estates, or in such other instalments and on such other dates as the [3] [Board of Revenue] may direct, or, if the [8] [Board of Revenue] shall so order, the whole amount so payable on account of such [2][cess] for each year shall be payable in a single sum on any such date as the [3] [Board of Revenue] may appoint.

> In default of payment as hereby required, the provisions of section 47 shall be applicable.

Notices to be served.

89. Whenever the service of a notice on the holder of a revenuefree estate is required by the provisions of section 40, the Collector shall cause such notice to be served, notwithstanding that the revenuefree estate may have been annexed to another estate as hereinbefore provided;

and the Collector shall further cause a notice containing the same particulars to be served in respect of such revenue-free estate on the holder of the other estate to which it is under the provisions of section 85 annexed.

Collector may revoke orders section 85.

90. The Collector may at any time, with the sanction of the Commissioner, revoke any order passed under section 85, and shall give passed under notice of such revocation both to the holder of the revenue-free estate affected and to the holder of the other estate to which such revenuefree estate was annexed.

CHAPTER VII.

MISCELLANEOUS.

Collector may appoint certain establishments.

91. The Collector, with the sanction of the Board of Revenue, may appoint such establishments as may be required for making valuations and re-valuations under this Act, for making collections, recovering arrears, keeping accounts connected therewith, and generally

^[1] The word "cess" was substituted for the words "cesses respectively" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2).

[2] The word "cess" was substituted for the word "cesses" by *ibid*, s. 4 (2).

[3] The words "Board of Revenue" were substituted for the words "Lieutenant-

Governor" by ibid, s. 8.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code

(Secs. 91A-96.)

for all purposes connected with such valuations, re-valuations, collections and recoveries, and other purposes of this Act, and may incur such other expenses as are requisite for such purposes;

and the payments of such establishments and other charges on bills signed by the Collector shall be the first charge on the [1][District

Fund.

[2]91A. The Collector may, with the sanction of the Commissioner, Payment of pay to any person appointed by him to collect the [3][local cess] such commission to tahsildars. percentage of the total amount collected by such person as to him may seem fit.

92. For the purpose of making any valuation of lands directed Powers of Collector in by this Part, the Collector shall exercise the powers vested in Collectors making by clause 1 of section 23, and clause 1 of section 24 of Regulation 7 of valuation. 1822[4], except so far as the said clauses authorize any inquiry into rights or interests attaching to such lands.

93. Every valuation under this Part shall be open to revision by Commisthe Commissioner or Board of Revenue[5], and not otherwise.

Board may revise

94. Any person who is bound to make any return under this Part False shall be deemed to be legally bound to give notice and to furnish returns. information to a public servant in respect of the same.

If the Collector shall see ground for believing that any return made is false, he may prosecute the maker accordingly. [6]*

95. Every return filed by or on behalf of any person in pursuance Returns of the provisions of this Part shall bear the signature and address evidence against the of such person, or his authorized agent, and shall be admissible in maker only. evidence against such person, but shall not be admissible in his favour.

96. Every notice under this Part required to be served, except as Service of otherwise expressly provided, may be served-

under this

(1) by delivering the same to the person to whom it is directed. Part. or, on failure of such service, by posting the same on some conspicuous part of the house in which the said person resides, or by delivering the said notice to any agent

[2] Section 91A was inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act

4 of 1910), s. 16, post, p. 928.

[3] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (a), printed in Vol. III of this Code.

[4] The Bengal Land-revenue Settlement Regulation, 1822. It is printed in Vol.

I of this Code. [5] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913), in Vol. III of this Code.

[6] The portion repealed by the Bengal Cess (Amendment) Act, 1910 (Ben. Act, 4

of 1910), s. 17, is omitted.

^[1] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.

(Secs. 97-98.)

- authorized to appear generally for the person to whom such notice is directed; or
- (2) by sending a registered letter containing such notice directed to the said person at his usual place of abode, or to the place where he may be known to reside; or
- (3) by posting a copy of the notice at the mal-cutcherry of the estate or tenure to which the notice relates, or, if no such mal-cutcherry be found, on some conspicuous place on such estate or tenure: and, in the case of estates paying their annual revenue by four instalments, by delivering another copy thereof to the agent who shall have paid an instalment of revenue next after the preparation of such notice. In all cases where two or more persons are holders of an estate or tenure, service of notice under this clause shall be deemed to be good and sufficient service on each and all of such persons.

Costs of pervice.

97. The costs of service of every notice and process by this Act required to be served shall in the first instance be defrayed from the [1] [District Fund,] and, subject to such rules as may be made by the Board of Revenue^[2] under section 106, shall be recoverable either from the person to whom such notice or process is addressed, or from the person owing to whose default such notice or process is issued, as the Collector may think fit; and every such amount shall be deemed to be due to the Collector, but when levied by the Collector shall be credited to the [1][District Fund:]

No costs to he recovered for certain notices.

Provided that no costs or other expenses whatever shall be recovered from any person in respect of the publication or issue of any proclamation or notice calling for any return or giving intimation of any amount payable by any person as cess under this Act other than notices of demand to pay any amount of cess which has become due.

Dues under the Act to be levied as public demand.

[3]98. Every amount due, or which may become due, to any Collector under the provisions of this Act in respect of any arrears of cess, of any expenses incurred, of any fee or costs payable, of any notices served, of any fines imposed, or on any other account, may be realized by such Collector by any process provided by any law[4] for the time

^[1] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.

[2] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III

of this Code.

^[3] Section 98 is also applicable to the recovery of fines imposed under s. 19 and certain other sums—see ss. 18 and 77, ante, pp. 378 and 406.
[4] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), in Vol. III of this Code.

(Sec. 99.)

being in force for the realization of public demands; and shall be deemed to be a public demand under such law:

[1] Provided that the [3] Disexpenses incurred, and for all costs and damages for which dues as aforesaid.

 $\lceil 2 \rceil$ Provided that the $\lceil 4 \rceil$ District Fund shall indemnify the trict Committee shall indemnify Collector of the district for all the Collector of the district for all expenses incurred, and for all costs and damages for which such Collector may become liable such Collector may become liable (whether in connection with suits (whether in connection with suits before the Civil Courts or other- before the Civil Courts or otherwise) in respect of any proceed-wise) in respect of any proceedings for the recovery of any such ings for recovery of any such dues as aforesaid.

99. Instead of proceeding as provided by the last preceding sec- collector tion for the recovery of any sum due under this Act, or if after so pro- may recover ceeding the Collector shall have failed to find property belonging to the dues out of rent. person from whom any such sum is due, by the sale of which such sum may be fully recovered, the Collector may, if he see fit, after recording his opinion to that effect, cause a notification in form in Schedule F contained to be issued for the estate or tenure in respect of which any such amount is due.

Such notification shall be published by beat of drum in every village containing any land to which such notification relates, and a copy thereof shall be posted in a conspicuous place in every such village and at the mal-cutcherry of the estate or tenure to which such notification relates, if such cutcherry be found.

Every payment of rent, save and except to the Collector or some person by him thereunto appointed, made after such publication, until further order from the Collector, shall be null and void;

and the Collector may recover by any process of law for the time being in force, by which he might recover rent due to the Government from a tenant in an estate which is managed directly by the Collector,

^[1] This provise is in force in this form in all areas in Bihar and Orissa in which Ben. Act 3 of 1885 is in force. It does not apply to the Sonthal Parganas but will be in force in that district when Ben. Act 3 of 1885 is extended to it.

^[2] This proviso is in force in this form in the Sonthal Parganas only. It will cease to be in force in that district when Ben. Act 3 of 1885 is extended to it.

The difference in the proviso as in force in the Sonthal Parganas and elsewhere lies in the words printed in italics.

^[3] The words "District Road Fund" were substituted for the words "District Road Committee" in the original section by Ben. Act 3 of 1885, s. 2 and Sch. II, post, p. 592 and the words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.

^[4] The words "District Committee" were substituted for the words "District Road Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (5), printed in Vol. III of this Code.

(Secs. 100-102.)

the rent then or thereafter to become due from any occupier, tenureholder, under-tenant or raiyat on the estate or tenure in respect of which the notification has been issued, until the amount due to the Collector together with all costs, shall be satisfied, whereupon the said notification shall be revoked.

The receipt of the Collector in respect of all sums paid to him as rent or so recovered shall be, to the extent of such sums, a valid discharge in respect of rent due by the occupier, tenure-holder, undertenant or raiyat to whom such receipt is given.

Collector's claim to have priority.

Board of Revenue may invest any person with Collector's powers. Collector may delegate powers.

In case the Collector shall see fit so to proceed, the claim for arrears of [1][local cess] due from any estate or tenure in respect of which a notification has been issued as above provided shall have priority over any other demand or claim or lien existing thereupon other than the demand of Government revenue.

100. The [2] [Board of Revenue] may at any time invest any person with the powers of a Collector under this Part to be exercised by such person under the control or supervision of the Collector, or independently of such control and supervision, as the [2][Board of Revenue] shall

101. The Collector may * * [8] delegate all or any of his powers and functions under this Part to be exercised, under the control and supervision of the Collector, by any Deputy Collector, Assistant Collector, Sub-Deputy Collector or other officer of like rank:

Provided that every order passed by such Deputy Collector, Assistant Collector, Sub-Deputy Collector or other officer shall be appealable to the Collector within fifteen days of such order being passed.

102. Every person who shall deem himself to be aggrieved by any valuation made by a Collector under the provisions of section 75 or 76 may, within one month after the issue of the notice mentioned in section 78, and, [4][subject to anything contained in Chapter IIA,] every person who shall deem himself to be aggrieved by any valuation made by the Collector under the provisions of any other section of this Part, may,

within one month after the posting up of a copy of the valuationroll as mentioned in section 35,

[1] The words "local cess" were substituted for the words "road cess and public

orks cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (a), printed in Vol. III of this Code.

[2] The words "Board of Revenue" were substituted for the words "Lieutenant-Governor" by ibid, s. 8.

As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III

of this Code.
[3] The words "with the sanction of the Commissioner" were omitted by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 19, printed in Vol. III of this Code and are omitted.

[4] The words in square brackets were inserted by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 18, post, p. 928.

Appeals against valuation. (Secs. 103-106.)

prefer his objections to the Collector;

and, if such objections, or any of them, are disallowed, may, within one month of such disallowance, appeal to the Commissioner against such valuation, and the decision of the Commissioner shall be final.

103. Every order for the levy of a fine or of expenses passed by a Orders Collector under this Act shall be appealable to the Commissioner within for levy one month from the service of the first process for the levy of such fine pealable. or expenses. Except as otherwise provided in section 18, pending such appeal, and until the order of the Commissioner, which shall be final, all process for such levy shall be discontinued.

104. Every order passed by the Collector under sections 19, 20, 26, Orders $\lceil 1 \rceil \lceil 46(2) \rceil$ 50, 51, 53, 85, 98 or 99 shall be appealable to the Commis-appealable sioner within one month from the date of such order.

to Commissioner.

[2] 105. Notwithstanding anything hereinbefore contained,—

(a) the Collector may at any time revise any order made under Collector. this Part by himself or by any officer subordinate to him, unless an appeal against such order has been preferred, supervision and

Revision of orders by and conby Com-

(b) all proceedings of the Collector or of any officer of a lower missioner grade under this Part shall be subject to the general Board. control and supervision of the Commissioner and of the Board of Revenue[3], and all proceedings of the Commissioner under this Part shall be subject to the general control and supervision of the Board of Revenue[3].

106. The Board of Revenue[3] may from time to time make, and, Board may when made, from time to time alter, add to or cancel, any rules [4] - make

- (a) prescribing forms for the notices, returns and valuation-rolls rules. required by this Part to be issued or made;
- (b) prescribing the amounts which shall be levied in respect of the issue of each notice and process under this Part, and regulating the recovery thereof under section 97;
- (c) prescribing the amount of copying fee to be levied in respect of supplying extracts and copies of returns and valuationrolls as provided in section 34;

[1] The figures "46 (2)," in s. 104, were inserted by the Bengal Cess (Amendment)

Act, 1910 (Ben. Act 4 of 1910), s. 19, post, p. 929.

[2] This section was substituted for the original section 105, by the Bengal Cess
(Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 20, post, p. 929.

[3] As to the present constitution and powers of the Board of Revenue, see now the
Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913) in Vol. III of chis Code.

[4] For rules made under section 106 for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 107-109.)

- (d) apportioning the amount of the [1] [cess] for the payment of which the respective holders of the several shares of an estate in respect of which, separate accounts are kept shall be primarily liable under section 44;
- (c) regulating the opening, keeping and closing of separate accounts in respect of amounts of cess payable by recorded shareholders in revenue-free estates as provided in section 46:
- (f) regulating the proceedings of Collectors under Chapter V;

and otherwise providing for the proper execution of this Act in respect of valuations of the assessment and of the levy of the [1][cess] and other sums due under the same.

107. Nothing in this Part contained, and nothing done in accord-All rights in immovable ance with this Act, shall be deemed to affect the rights of any person property saved unless in respect of any immovable property or of any interest therein except affected by as otherwise expressly provided in this Act. this Act.

Part III.—Constitution and Administration of the [2] District Fund].

CHAPTER VIII

CONSTITUTION AND APPLICATION OF THE DISTRICT FUND.

Constitution cf District consist-Fund.

[2] 108. The District Fund of every district under this Act shall

- (a) of the amount produced by the local cess;
- (b) of all sums levied or recovered as fines, penalties, interest or otherwise in respect of the local cess;
- (c) of all sums assigned by the Local Government thereto; and
- (d) of all sums whatsoever which may be at the disposal of the District Committee as hereinafter appointed.

Application of District Fund.

[2] 109. The District Fund of every district shall be applicable to the following objects and in the following order:—

Firstly.—To the payment of the cost of establishments entertained and expenses incurred by the Collector as mentioned in section 91;

^[1] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 4(2), printed in Vol. III of this Code.

^[2] Sections 108 and 109 in the form in which they were in force in districts, to

^[2] Sections 108 and 108 in the form in which they were in force in districts, to which the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), printed, post, p. 521 applied, were repealed by s. 3 of the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), printed in Vol. 111 of this Code.

The present section 108 was substituted by s. 20 (1) of the same Act, for the former s. 108 in the form in which it was in force in the district to which Ben. Act 3 of 1885 had not been extended, viz., the Sonthal Parganas district, and s. 109 in the form in which it was in force in the Sonthal Parganas was amended by sub-section (2) of section 20 of the Bihar and Orissa Cess (Amendment) Act. 1916. Sections 108 and 108 section 20 of the Bihar and Orissa Cess (Amendment) Act, 1916. Sections 108 and 109 are now in force only in the Sonthal Parganas.

(Sec. 109.)

to the indemnification of the Collector, with the sanction of the Commissioner, for any other costs or damages which he may have incurred, or for which he may have become liable, in the course of the proceedings for the assessment and collection of the [1][cess] under this Act;

and to the payment of such sums as may be determined by the Lieutenant-Governor for the purposes mentioned in section 181, subject to the limit imposed in that section:

Secondly.—To the payment of establishments entertained and expenses incurred by the [2][District Committee] for the purposes of this Act, and of any leave-allowances, gratuities or pensions which may be payable under this Act; [3][and of any grants made for supplementing contributions by members of such establishments to any Provident Fund created under section 138A.]

Thirdly.—To the payment of any sums which the Committee may under this Act from time to time have undertaken to pay as interest on capital expended on any works which may directly improve the means of communication within the district or between the district and adjacent districts;

Fourthly.—To the repair and maintenance of roads, bridges, waterchannels and other means and appliances for facilitating communications which have been taken charge of by the Committee under this Act, or towards which they may have agreed to contribute;

Fifthly.—To the construction of new roads, bridges, water-channels and other means of communication;

to the construction, provision, repair and maintenance of any means and appliances for facilitating communication within the district or between the district and adjacent districts which the Committee may determine to construct or to take charge of, or towards which they may determine to contribute;

to the planting of trees by the roadside; and

to the construction and maintenance of any means and appliances for improving the supply of drinking-water, or for providing or improving drainage; and

[4] Sixthly.—Subject to such rules and restrictions as the Local Government may prescribe in this behalf—

(a) to the promotion of Education, Sanitation and Vaccination;

^[1] The word "cess" was substituted for the word "cesses" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (2), printed in Vol. III of this Code.

^[2] The words "District Committee" were substituted for the words "District Road Committee" by ibid, s. 4 (5).

^[3] The words in square brackets in s. 109, Secondly, were inserted by ibid, s. 20 (2) (i).

^[4] This clause Sixthly was inserted by ibid, s. 20 (2) (ii). 27

(Sec. 109.)

- (b) to the construction and maintenance of hospitals and dispensaries and to the provision of medical relief;
- (c) to the relief of famine and distress within the district;
- (d) to the construction and maintenance of veterinary dispensaries and to the payment of qualified persons to prevent and treat diseases of horses, cattle and other animals;
- (e) to the improvement of agriculture or of the breed of horses, cattle or asses, and to the breeding of mules;
- (f) to the carrying out of any other local work likely to promote the health, comfort or convenience of the public and not otherwise provided for by this Act; and

[1] Seventhly.—To investment in any local debenture loans issued by the Government of India or the Lieutenant-Governor for the construction of productive works, which may directly improve the means of communication within the district, or between the district and adjacent districts:

Provided-

Provisos.

- (1) that no sum shall be expended from the [2] [District Fund] in the construction of any channel for the purposes of irrigation,
- or for the purposes of drainage connected with any irrigationworks in charge of public officers,
- or for the improvement or maintenance of any water-channel on which tolls are levied, when the proceeds of such tolls are not paid into the [2][District Fund;]
- (2) that no part of the [2] [District Fund] of any district shall be applied to the construction or maintenance of any road within any first or second class municipality under the Bengal Municipal Act, 4876, [3] unless such road shall Ben. Act 5 have been expressly excluded from the operation of the of 1876. said Act under section 32 thereof; and
- (3) that no part of the [2][District Fund] of any district shall be expended on any work or for any purpose without the limits of such district, unless the special sanction of the Lieutenant-Governor to such expenditure shall have been obtained, as being for the benefit of the district charged.

^[1] This clause Seventhly was formerly clause Sixthly but was re-numbered by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 20 (2) (ii),

Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 20 (2) (ii), printed in Vol. III of this Code.

[2] The words "District Fund" were substituted for the words "District Road Fund" by ibid, s. 4 (4).

[3] Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 5 of 1884), which has been further repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act VII of 1922), in Vol. III of this Code, and this reference should now be taken to be made to the last Act—see the Bihar and Orissa General Clauses Act, 1917 (B. and O. Act 1 of 1917), s. 10 in Vol. III of this Code.

(Secs. 110-114.)

[1]110. With the sanction of the Lieutenant-Governor, the Committee tee may from time to time undertake to guarantee the annual payment may from the [2][District Fund] of such sums as they shall think fit, as sums for interest on capital expended on any works which may directly improve District Fund the means of communication within the district, or between the on capital. district and other districts.

[1]111. Whenever any works to which any portion of the [3][Dis-Lieutenanttrict Fund] of any district is applicable under the last preceding section Governor extend over more than one district, the Lieutenant-Governor may decide apportion the proportions in which the [3] [District Fund] of each district concerned costs of shall contribute towards the cost or interest upon the cost of such works. extending

over more than one district.

CHAPTER IX.

THE [4][DISTRICT COMMITTEE.]

[1]112. For the administration of the [2][District Fund] and for Constitution the construction, repair and maintenance of district roads, bridges, water of District channels and other works as aforesaid under this Act, the [5] Com-Committee. missioner] shall from time to time appoint, or cause to be elected, under such rules in regard to qualification, election and discharge as may by him be prescribed, any number of the payers of [6][local cess] of such district, their managers or agents, to be members of a [4] [District Committee.]

[1]113. Every member of the Committee may hold office for five Members years from the date of his appointment or election, and the [5][Commis-may hold sioner may at any time before the expiration of such term of five five years. years accept the resignation of such member.

Resignation of member.

[1] 114. The Lieutenant-Governor may remove any member Removal of appointed or elected under this Act, if such member shall have been member. guilty of misconduct in the discharge of his duties, or of any disgraceful conduct.

^[1] Sections 110 to 181 were repealed by the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, post, p. 522, and are now in force only in the Sonthal Parganas district. They will cease to be in force in that district when Ben. Act 3 of 1885 is extended to it.

^[2] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.

^[3] The words "District Fund" were substituted for the words "Road Fund" by ibid.

^[4] The words "District Committee" were substituted for the words "District Road Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (5), printed in Vol. III of this Code.

^[5] The word "Commissioner," in sections 112 and 113, was substituted for the words "Lieutenant-Governor" by the Bengal Cess (Amendment) Act, 1910 (Ben. Act 4 of 1910), s. 21, post, p. 929.

^[6] The words "local cess" were substituted for the words "road cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (g), printed in Vol. III of this Code.

(Secs. 115-121.)

Member who neglects to attend meetings, or is sentenced to imprisonment, to cease to be member. Appointment of ex-officio members.

[1]115. Any member who, without having obtained permission from the Committee, shall have omitted to attend six consecutive meetings of the Committee,

and any member who shall have been sentenced to imprisonment. shall cease to be a member of the Committee.

[1]116. In addition to the members appointed or elected as aforesaid, the Lieutenant-Governor may appoint[2] any officer of Government to be a member of the Committee, and may direct, [2]by a writing signed by him, that all persons holding the offices in such writing specified shall be ex-officio members of the Committee for any district in which they exercise the said offices, and in which this Act shall have come into force:

Provided that the number of members of the Committee holding salaried offices under the Government shall not be more than one-third of the total number of the Committee.

[1]117. No act or proceedings of the Committee shall be invalidated by reason that at the time of doing such act or taking such proceedings the number of members of the Committee as then existing, who were holding salaried offices under the Government, was greater than the proportion mentioned in the last preceding section; and no act or proceedings of any meeting shall be invalidated by reason of the proportion of members holding such salaried offices as aforesaid present at the same being greater than as provided by the said section.

Their mode of transacting business.

[1]118. The Collector of the district shall be the Chairman of the Committee, and the Vice-Chairman shall be appointed as provided in section 129.

[1]119. The Committee shall have an office within the district in and for which they shall have been appointed, and shall meet for the transaction of business at least once in every quarter of a year.

[1]120. There shall be two kinds of meetings for the transaction of business, namely, special meetings and ordinary meetings.

[1]121. Meetings of the following descriptions shall be special meetings :-

(1) any meeting convened by the Chairman under section 123;

(2) for the election of a Vice-Chairman under section 129;

salaried offices under Government not to exceed one-third. Proceedings not to be invalidated by reason of excessive proportion of officials.

Members holding

Two kinds of meetings. What are special meetings.

Chairman and Vice-

Chairman

Committee

of Committee.

to have an office.

> [1] See footnote [1] on p. 419, ante. [2] For a list of orders made under section 116, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 122-125.)

- (3) for determining the salary of the Engineer under section 131;
- (4) for the election of an Engineer under section 132;
- (5) for determining the details of establishment, and the salaries to be attached to each office under section 133;
- (6) for making rules for leave of absence under section 134, and for pensions and gratuities under section 138;
- (7) for considering and passing the general statement under section 141 or any revised or supplemental statement under section 143;
- (8) for preparing and framing an estimate of income and expenditure, and for determining the rate of [1][local cess] for the coming year under sections 146 and 148;
- (9) for amending any such estimate under section 157;
- (10) for receiving and considering the annual report and accounts under section 179.

All other meetings shall be ordinary meetings.

[2]122. The Chairman, or, in case of his absence at the time President appointed for the meeting, the Vice-Chairman, shall preside at every at meeting of the Committee. In the absence of both the Chairman or meetings. Vice-Chairman, the members present may choose one of their number to be president of such meeting.

[2]123. The Chairman, or, in case of his absence, the Vice-Chair- Meeting to man, may, whenever he thinks fit, and shall, upon a requisition made be called in writing and signed by not less than one-third of the members, convene tion. a meeting.

[²]124. At least ten days' notice shall be given of every meeting. Notice of Every notice shall state the business to be transacted at the meeting proposed to be called; and no business other than that so stated shall be transacted at such meeting, except with the permission of the meeting.

[2]125. (1) No business shall be transacted at any special meeting Quorum. unless at least one-fourth of the total number of members forming the Committee at the time of the meeting are present at the commencement and close of such business; and no business shall be transacted at an ordinary meeting unless at least three members are so present.

(2) The Committee may delegate any of their powers to Sub-Delegation Committees consisting of such member or members of their body as they think fit.

of powers to Sub-Committee.

Any Sub-Committee so formed shall, in the exercise of the powers delegated, conform to any regulations that may be imposed on them by the Committee.

^[1] The words "local cess" were substituted for the words "road cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 4 (1) (g), printed in Vol. III of this Code. [2] See footnote [1] on p. 419, ante.

(Secs. 126-129.)

Adjournment, voting, etc., of Committee.

(3) The Committee may hold meetings and adjourn as they think proper.

Questions at any meeting shall be determined by a majority of votes of the members present, and, in case of an equal division of votes, the president shall have a second or casting vote.

Adjourned meeting.

[1]126. If at the time appointed for a special meeting, or within one hour therefore, a quorum is not present, the meeting shall stand adjourned till some future day to be appointed by the Chairman or Vice-Chairman of the Committee, and ten days' notice of such adjourned meeting shall be given.

The members present at such adjourned meeting shall form a quorum, whatever their number may be.

Minute-book to be kept. [1]127. The minutes of the proceedings of every meeting shall be recorded in a book to be kept for that purpose in the office of the Committee, and any person resident in, or owning or holding land in, the district, may at all reasonable times inspect and examine such book without payment of any fee, and may obtain a certified copy of any extract therefrom on payment of such fees as the Lieutenant-Governor may direct.

At the request of any member of the Committee who is not acquainted with the English language, the Chairman shall cause to be delivered to such member an abstract of the minutes of any meeting in the vernacular of the district.

Correspondence between Committee and Lieutenant-

Lieutenant-Governor. Committee to furnish

Committee to furnish information.

Appointment of Vice-Chairman. [1] 128. All correspondence between the Committee and the Lieutenant-Governor shall pass through the office of the Commissioner, who in all things under this Part shall be subject to the control and supervision of the Lieutenant-Governor.

The Committee shall furnish the Lieutenant-Governor and the Commissioner respectively with any information for which they may call, connected with the duties imposed upon them by this Act.

Their Vice-Chairman, Engineer and Establishment.

[1]129. The first meeting of the Committee shall be convened by the Chairman at such time as he shall think fit, and shall proceed to nominate one of the members of the Committee to be Vice-Chairman of the Committee, and shall submit to the Lieutenant-Governor the name of the person so nominated; whereupon the Lieutenant-Governor may, if he think fit, appoint such person to be Vice-Chairman of the Committee, or may require the Committee to nominate and to submit to him the name of some other person, and whenever the office of Vice-Chairman shall be vacant a Vice-Chairman shall be nominated and appointed in the manner above mentioned:

Vice-Chairman may be appointed ad interim.

Provided that whenever the office of Vice-Chairman shall become vacant, the Chairman may, with the approval of the Commissioner,

(Secs. 130-132.)

appoint any member of the Committee to be Vice-Chairman thereof ad interim until the vacancy shall have been filled up by appointment as above provided.

The Vice-Chairman may hold office for a period not exceeding two Vice-Chairyears, and at the expiration of that time may be re-nominated by the man may Committee and re-appointed to the office by the Lieutenant-Governor.

ior two years.

[1]130. The Lieutenant-Governor may, if he thinks fit, upon the Removal of recommendation of two-thirds of the members voting at any special man. meeting, remove the Vice-Chairman, and any member entitled to vote may give a proxy in writing to any other member for the above purpose.

Such proxy shall be produced at the time of voting, and shall entitle Proxies the member to whom it is given to vote as authorized by the tenor of allowed. such proxy.

[1] 131. The Committee at a special meeting shall determine the Salary of salary which they are prepared to give to the District Engineer, and Engineer. shall report the same to the Lieutenant-Governor, who may approve of such salary, or require the Committee to increase or to reduce the same. In determining such salary regard shall be had in each district to the character of the works and the nature of the duties required therein. The salary so determined and approved may from time to time be altered by the Committee with the approval of the Lieutenant-Governor.

[1]132. (1) Whenever the office of District Engineer shall be vacant, Appointment of the Committee shall represent the occurrence of such vacancy to the Engineer. Lieutenant-Governor, who shall thereupon cause a list of qualified officers, not being less than three in number, to be laid before the Committee, and the Committee shall proceed to elect a District Engineer from the persons named in such list.

(2) All appointments of District Engineers existing at the time of Existing the commencement of this Act shall hold good for a period not exceeding ments to two years from such commencement, and on the expiration of such time hold good every office of District Engineer to which the last appointment shall for two every office of District Engineer to which the last appointment shall vears only. have been made before the commencement of this Act shall be deemed to be vacant, and a District Engineer shall be appointed in manner above prescribed:

Provided that, if the Lieutenant-Governor and the Committee are satisfied that no change is required, any person holding the appointment of District Engineer at the time of the commencement of this Act may, with the sanction of the Lieutenant-Governor, be re-appointed by the Committee to be District Engineer.

(3) The District Engineer may be suspended, removed or dismissed Engineer from his office by the Lieutenant-Governor.

suspended or dismissed

(Secs. 133-135.)

Establishments and to be fixed.

[1]133. The Committee, subject to the limit of cost imposed by salaries how section 135, may, with the sanction of the Commissioner, determine, and from time to time alter, the details of the establishment of officers (other than the District Engineer), clerks and servants to be employed by them or by any Branch Committee as hereinafter appointed, and the salary to be paid to each such officer, clerk or servant:

Provided that no salary exceeding Rs. 200 a month shall be attached to any office without the express sanction of the Lieutenant-Governor.

Appointments to offices on the establishment so determined shall be made as follows:--

Appointment how to be made.

to every office of which the salary does not exceed Rs. 50 per mensem, by the Chairman of the Committee or of the Branch Committee, as the case may be;

to every office of which the salary exceeds such amount, by the Committee or the Branch Committee, as the case may be, with the approval of the Commissioner.

Any such officer, clerk or servant as aforesaid may be suspended or dismissed by the authority appointing him, subject to an appeal to the Commissioner, whose decision shall be final.

Leave of absence to officers.

[1] 134. The Committee shall make such rules as to leave of absence and absentee allowances as they from time to time may think it for their own officers and servants, as well as for those of any Branch Committee:

Provided that, in the case of District Engineers drawing a salary of Rs. 200 or upwards per mensem, leave of absence on medical certificate may be granted by the Lieutenant-Governor in accordance with the rules contained in Supplement F of the Civil Leave Code, or any other rules[2] for the time being in force for uncovenanted officers of Government, and that no other leave of absence shall be granted to a District Engineer by the Committee without the sanction of the Lieutenant-Governor.

Salaries not to exceed one-fourth of income.

[1] 135. The aggregate salaries and absentee allowances of the Engineers, officers, clerks, and servants aforesaid, entertained by any [3] [District Committee] and by all Branch Committees in any district, together with the expenses of the Collector's establishments under section 91, and the amount which such [3][District Committee] is required to pay under section 181, shall not for any one year, without the express sanction of the Lieutenant-Governor, exceed one-fourth of the income of the Committee for the said year, exclusive of the balance of the previous year.

^[1] See footnote [1] on p. 419, ante.
[2] See now the Bihar and Orissa Service Code, 1928.
[8] The words "District Committee" were substituted for the words "District Road Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (5), printed in Vol. III of this Code.

(Secs. 136-138A.)

[1]136. The Lieutenant-Governor may, on the application of two-Appointthirds of the Committees in any division, appoint a Divisional Superin-Divisional tendent of Works, with the necessary office establishment, for the con-Superintrol and supervision of the executive works establishment in all districts Works. of such division, and may determine the proportion of the cost payable by each district in the division in respect of the same.

[1]137. The Lieutenant-Governor may, on the application of any Appointnumber of districts, whether forming part of the same division or other- Superintenwise, appoint a Superintendent of Works and establishment as aforesaid dent of for such districts, and determine the proportion of the cost payable by group of each such district in respect of the same.

[1] 138. The Committee may, with the approval of the Lieutenant-Pensions, Governor, make rules for pensions and gratuities to be granted and paid gratuities. out of the [2][District Fund] to their officers and servants, and to those of any Branch Committee, and to the members of any establishment appointed by the Collector of the district under section 91, and may from time to time, with such approval, repeal, alter or add to such rules:

Provided that no officer shall be entitled to any pension or gratuity under this Act from the [3][District Fund] of any district in respect of any period during which he was not serving under the Committee of such district, or under the Collector of such district on an establishment entertained under section 91 for the purposes of this Act:

Provided also that no officer lent by Government and contributing from his salary to any pension fund shall be entitled to claim any pension from the [2] [District Fund.]

[4] 138A. The Committee may from time to time with the sanction Provident of the Commissioner and subject to the control of the Lieutenant-Governor make rules-

- (a) for the creation and management of a Provident Fund for its several establishments:
- (b) for compelling members of its establishments to make contributions to such funds;
- (c) for supplementing such contributions by grants from the District Fund:
- (d) for the payment of moneys out of such Provident Fund:

^[1] See footnote [1] on p. 419, ante.

^[2] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.

^[3] The words "District Fund" were substituted for the words "Road Fund" by

^[4] This section 138A was added, for districts in which the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), printed, post p. 521 is not in force, viz., the Sonthal Parganas district, by ibid, s. 20 (3).

(Secs. 139-141.)

and may, with the like sanction, and subject to the like control, repeal, add to, or alter such rules.

Their Functions.

Mode of executing contracts.

[1]139. The Committee may, through their Chairman or Vice-Chairman, enter into and execute any contract necessary for the purposes of this Act:

Provided that every contract made on behalf of the Committee in respect of any sum exceeding five hundred rupees, or which shall involve a value exceeding five hundred rupees, shall be sanctioned by the Committee and shall be in writing and signed by at least two of the members of the Committee, one of whom shall be the Chairman or Vice-Chairman.

Unless so executed, such contract shall not be binding on the Committee.

Penalty on members and officers being pecuniarily interested in contracts.

[1] 140. No member, officer or servant of the Committee shall be in anywise pecuniarily interested in any contract or work made with, or executed for, the Committee; and, if any such member, officer or servant be so interested, he shall be incapable of afterwards continuing to be a member of the Committee, or holding or continuing in any office or employment under the Committee, and shall be liable on conviction thereof to a fine of five hundred rupees:

Exception.

Provided that nothing in this section shall apply to any person by reason only of his being a shareholder in any Company incorporated by Act of Parliament or by Royal Charter or otherwise, or registered under any Act for the registration of joint stock companies, passed by the Parliament of the United Kingdom, or by any Indian Legislature, which may enter into any contract with the Committee, or execute any work for the Committee, if such person shall, at or before the time of any such contract being made or tendered for, declare to the Committee the extent of his interest in such Company, and, if he be an officer or servant of the Committee, obtain the sanction of the Committee to his continuing to be such officer or servant.

Statement of communications to be prepared.

[1] 141. On the commencement of this Act in any district or part of a district, the Vice-Chairman, within three months after his election, shall cause to be prepared a general statement of the roads, bridges, water-channels and other means of communication to be brought within the operation of this Act within the three years then next ensuing, and the Committee shall, at some meeting to be held within one month after the submission of such statement, or at any adjourned meeting, take such statement into consideration, and may pass such statement, or may make such alteration or addition therein as it shall think fit.

(Secs. 142-148.)

Such statement shall be prepared with due advertence to the provisions of section 109.

[1]142. The Committee shall forward the statement which shall be Statement to passed as provided in the last preceding section to the Commissioner for ed to Comtransmission to the Lieutenant-Governor.

missioner.

[1]143. The Vice-Chairman may in any subsequent year cause to Supplebe prepared a supplemental statement of the kind mentioned in section mental statement. 141 or a revised statement, and every such supplemental or revised statement shall be subject to the provisions of the last two preceding sections with respect to the statement therein mentioned.

[1]144. The Lieutenant-Governor may at any time order that any Lieutenantroad, bridge, water-channel or other means of communication as above- Governor may include mentioned be included in, added to, or excluded from, any statement or exclude or supplemental or revised statement prepared as mentioned in section any works in or from 141 or 143.

statement.

Estimates: Determination of the Rate for the Year, and Publication thereof.

[1]145. The Collector shall, at such date as the Committee shall fix, Collector to prepare and deliver to the Committee a statement showing under sepa-Committee rate heads the estimated proceeds, for the year then next ensuing of the annual [2][local cess]at the maximum rate hereinbefore provided, and also of estimated any sum and of any sources of revenue for the said year which the assets for Lieutenant-Governor shall have assigned to the said district, or which may be otherwise at the disposal of the Committee.

[1]146. The Committee shall, at some meeting to be held in such estimate to month as the Lieutenant-Governor shall determine [8], prepare an esti- be prepared. mate of the income and expenditure of the Committee for the year then next ensuing.

[1]147. Notwithstanding that any work has been included in such Works not estimate, the Committee shall not begin the execution of any work until executed detailed specifications and estimates of the same have been passed, or until until the execution of the work shall have been otherwise sanctioned by passed or any authority whose sanction to the execution of such work is required execution under any rules made by the Lieutenant-Governor on that behalf as hereinafter provided.

[1]148. In making the estimate of income as by the last section Committee required, the Committee shall take into consideration any sum and the rate of cess. proceeds of any source of revenue which shall have been placed at their

^[1] See footnote [1] on p. 419, ante.
[2] The words "local cess" were substituted for the words "road cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (I) (g), printed in Vol. III of this Code.

^[3] For an order made under section 146, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 149-151.)

disposal by the Lieutenant-Governor, or which may otherwise be available to them, and any unexpended balance of the [1][District Fund] of the previous year which is expected to be available for expenditure in the year of estimate; and shall proceed to determine the rate at which it will be necessary to levy the [2][local cess] for the last-mentioned year, so as to provide the further amount estimated to be required for expenditure in the said year.

Limit of estimate.

[3]149. The total amount proposed to be expended in any one year in and by any estimate prepared as required by section 146, shall not exceed the proceeds estimated to be at the disposal of the Committee for that year from the [2][local cess], if levied within the district at the maximum rate at which such cess is leviable as mentioned in section 6, together with any sum, and the annual proceeds of any source of revenue which shall have been placed by the Lieutenant-Governor at the disposal of the Committee, or which may be otherwise at their disposal, and with the estimated unexpended balance of the [1][District Fund] of the previous year as above mentioned.

Commissioner may revise estimate.

[1] 150. Every such estimate prepared by the Committee under section 146 shall be forwarded through the Collector of the district to the Commissioner; and the Commissioner may approve such estimate and the rate determined by the Committee.

Commissioner may under certain circumstances alter estimate.

[3] 151. If such estimate shall have been approved by any number, being less than two-thirds, of the members of the Committee present at the meeting at which such estimate was adopted, the Commissioner may, before approving of such estimate, make such alterations as he shall think fit in the details or total of such estimate, or may return such estimate to the Committee with instructions to make any such alterations in such details or total:

Provided that the Commissioner shall not make, and shall not require the Committee to make, otherwise than with their own consent, any such alterations as shall have the effect of raising the total of such estimate above the total of the sum estimated to be at the disposal of the Committee for expenditure during the year in question, the cess being levied at the rate which may have been determined for such year by the Committee under section 148.

^[1] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.

^[2] The words "local cess" were substituted for the words "road cess" by idid s. 4 (1) (g).

^[3] See footnote [1] on p. 419, ante.

(Secs. 152-153.)

On receipt of such instructions the Committee shall proceed to make such alterations, and shall re-submit the estimate to the Commissioner. who shall thereupon approve of the estimate and of the rate determined by the Committee.

[1]152. (1) If any estimate prepared under section 146 shall have Procedure been approved by any number, not being less than two-thirds, of the where members of the Committee present at the meeting at which such estimate been has was adopted, the Commissioner may, before approving of such estimate, approved by was adopted, the Commissioner may, before approving or such estimate, not less make a communication to the Committee, bringing to their notice any than twoalterations which it appears to him to be desirable to make in the thirds of details or total of such estimate:

Committee.

and, on receipt of such communication, the Committee shall proceed to re-consider such suggestions, and may either-

- (a) adopt such suggestions or any of them and revise their estimate accordingly, and, if necessary, the rate determined by them as that at which the cess shall be leviable during the coming year, and submit such revised estimate and rate for the sanction of the Commissioner; or
- (b) may adhere to their original estimate, and re-submit it to the Commissioner with their reasons for adhering to the same.
- (2) On receipt of such estimate so re-submitted, the Commissioner may either sanction the estimate and rate as determined by the Committee, or may submit such estimate, together with the reasons recorded by the Committee for adhering to the same, to the Lieutenant-Governor.

[1] 153. Whenever any such estimate shall be so submitted by the When estimate is Commissioner, the Lieutenant-Governor may approve of such estimate, submitted or pass such orders as he shall think fit, in respect to the alteration of the by Commisdetails or of the total of such estimate:

Provided that the Lieutenant-Governor shall not make any such Governor may pass alterations, or require the Committee to make any such alterations, as orders shall have the effect of raising the total of such estimate above the total thereon. of the sum estimated to be at the disposal of the Committee for expenditure during the year in question, the cess being levied at the rate which may have been determined for such year by the Committee under section 148, unless such rate shall in the opinion of Lieutenant-Governor be insufficient to provide for the proper maintenance of such works as are contained in the statement prepared under section 141 or 143.

If it shall appear to the Lieutenant-Governor that the proceeds of the cess at the rate so determined will not suffice for such purpose, the Lieutenant-Governor may order that the cess shall be levied for the year

sioner, Lieutenant-

(Secs. 154-158.)

in question at such rate as he may deem sufficient for such purpose, subject to the limit in section 6 provided.

Rate determined to be reported to Lieutenant-Governor. Rate to be published in Gazette.

[1] **154.** When the estimate prepared and the rate determined by the Committee shall have been approved by the Commissioner under sections 150, 151 or 152, the rate so determined and approved shall be reported by the Commissioner to the Lieutenant-Governor, who shall forthwith cause the same to be published in the Calcutta Gazette.

[1] **155.** When the Lieutenant-Governor shall under section 153 have approved of any estimate submitted to him as provided by section 152 and of the rate determined by the Committee under section 148, or under clause (a) of section 152 in connection with such estimate, or when the Lieutenant-Governor shall under section 153 have ordered that the cess shall be levied at any other rate, the Lieutenant-Governor shall cause such rate as finally fixed by him to be published in the Calcutta Gazette.

Rate published to be rate in force for year.

[1] **156.** The rate published in the said Gazette as provided in either of the last two preceding sections shall be the rate at which the [2] [local cess] shall be leviable in the district for the year in respect of which such rate is so published, and the Collector of the district shall cause such rate to be published and proclaimed throughout the district and notice be given thereof as in section 40 is provided.

Estimates may be amended.

[1] **157.** Any estimate prepared under section 146 and approved as hereinbefore provided may be amended or revised at any time with the sanction of the authority who originally approved of such estimate:

Provided that the total of the estimate of expenditure as amended shall not exceed the total of the sums estimated to be available for expenditure during the year.

CHAPTER X.

Branch Committees.

Branch Committees.

[1] **158.** In any district to which this Act shall have been extended, the Lieutenant-Governor may, in addition to a [3][District Committee] form as many Branch Committees as he shall think fit for carrying out the purposes of this Act, and shall appoint a Chairman and Vice-Chairman thereof, respectively, and shall define the portion of such district within which any Branch Committee shall exercise the powers conferred and discharge the duties imposed upon them by this Act:

^[1] See footnote [1] on p. 419, ante.
[2] The words "local cess" were substituted for the words "road cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (g), printed in Vol. III of this Code.

[8] The words "District Committee" were substituted for the words "District Road Committee" by *ibid*, s. 4 (5).

(Secs. 159-164.)

Provided that, whenever the office of Vice-Chairman of any Branch Committee shall become vacant, the Chairman thereof may, with the approval of the Commissioner, appoint any member of such Branch Committee to be Vice-Chairman thereof ad interim until the vacancy shall have been filled up by the Lieutenant-Governor.

[1] 159. The provisions of sections 112 to 117 (both inclusive), 119, Sections to 197 (both inclusive), 120 and 140 manuating [2] [District Companies apply 122 to 127 (both inclusive), 139 and 140, respecting [2] [District Com- to them. mittees], shall apply, so far as the same are applicable, to such Branch Committees.

[1] 160. The Lieutenant-Governor may remove the Chairman or Chairman Vice-Chairman of a Branch Committee whenever he shall think fit.

and Vice-Chairman may be removed.

[1]161. Every Branch Committee may from time to time select any Member of member thereof to be an additional member of the [2][District Com-Committee mittee] and such member shall thereupon, for the space of one year, may be become a member of the said Committee.

member of

Committee.

District

[1] 162. Every such Branch Committee shall be, except as herein-Committee's after provided, subordinate to the [2][District Committee], and shall statements. forward to the Committee such statements, suggestions and estimates as it may think fit, and the Committee shall consider and have regard to such statements, suggestions and estimates in framing the statements and estimates hereinbefore directed.

[1] 163. Any such Branch Committee may require that any such Branch Committee statement, suggestion or estimate shall be submitted to the Commissioner may require for his consideration and for that of the Lieutenant-Governor.

statements to be submitted to Lieutenant-Governor.

[1]164. The Lieutenant-Governor may in each year assign to any Funds of Branch Committee so much of the [3][District Fund] levied for that year Committee. in the district, for portion of which such Branch Committee is appointed, as he may think fit, not exceeding the total estimated proceeds of the [4][local cess] leviable within the said portion of the district; and, further, may allot to the said Branch Committee so much of the income of the [5][District Fund] from other sources as he shall think fit.

^[1] See footnote [1] on p. 419, ante.
[2] The words "District Committee" were substituted for the words "District Road Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (5), printed in Vol. III of this Code.
[8] The words "District Fund" were substituted for the words "Road Fund" by ibid, s. 4 (4).
[4] The words "local cess" were substituted for the words "road cess" by ibid, s. 4 (1) (g).

[8] The words "District Fund" were substituted for the words "District Road Fund" by ibid, s. 4 (4).

(Secs. 165-169.)

Special powers of the Branch Committee.

[1]165. The Lieutenant-Governor may in any such case declare that the Branch Committee shall have the full powers of a [2][District Committee] within such portion of the district, and, whenever the Lieutenant-Governor shall so have declared, the [2][District Committee] shall, within such portion of the district, cease to exercise powers and functions under sections 133, 139, 141, 142, 143 and 146.

Such powers shall then vest in the Branch Committee and the provisions of sections 120, 121 [with the exception of clauses (2), (3), (4) and (6)], 128, 142, 144 and 147, shall apply to the proceedings of such Branch Committee, provided that all correspondence with the Commissioner shall be submitted through the Collector of the district; in any case in which the Lieutenant-Governor may declare that a Branch Committee shall have the powers of a [2][District Committee] for specified works or specified purposes only, the powers of the [2][District Committee] in respect of such works and such purposes only shall cease within the said portion of the district, and such powers shall then vest in the Branch Committee.

Their estimates.

[1]166. Every Branch Committee so vested with powers as in the last preceding section provided shall prepare an estimate in regard to their annual income and expenditure similar to that required by section 146 to be prepared by the [2][District Committee.]

Limit of estimates.

[1]167. The provisions of sections 150, 151, 152, 153 and 157, shall, as far as they are applicable, apply to such estimate:

Provided that the aggregate amount to be expended by the Branch Committee in any year shall not exceed the aggregate of the fund placed at their disposal for that year.

Lieutenant-Governor may assign functions of Chapter XI to Branch Committee.

[1] 168. The Lieutenant-Governor may at any time order that any of the functions hereafter mentioned or referred to in Chapter XI shall be discharged by any Branch Committee instead of by the [2] [District Committee] in respect of any portion of the district for which such Branch Committee has been appointed.

Lieutenant-Governor may revoke order forming Branch Committee. [1]169. The Lieutenant-Governor may at any time revoke an order forming any Branch Committee or an order declaring that a Branch Committee shall exercise the full powers or any special powers of a [2][District Committee.]

^[1] See footnote [1] on p. 419, ante.

^[2] The words "District Committee" were substituted for the words "District Road Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (6), printed in Vol. III of this Code.

(Secs. 170-174.)

CHAPTER XI.

DISBURSEMENT AND ACCOUNTS OF THE [1][DISTRICT FUND.]

[2] 170. The [1] [District Fund] shall be lodged with the Collector Collector to of the district, who shall keep a separate account thereof, and shall cause prepare to be prepared an annual statement of such account showing in detail statement therein all sums paid into and all disbursements made from the treasury of the District on account of the [1][District Fund] during the year.

After the appointment of any Branch Committee in a district, the Collector of the district shall in like manner keep a separate account of the Fund placed at the disposal of such Branch Committee.

[2]171. All payments on account of the [1][District Fund] shall be Payments on made by the Collector out of the said Fund upon cheques signed by the account of the District Vice-Chairman for sums not exceeding one hundred rupees.

When the Vice-Chairman is absent or from any cause incapacitated from signing, the Chairman may sign such cheques on behalf of the Vice-Chairman.

Cheques for sums exceeding one hundred rupees shall be signed by the Chairman and the Vice-Chairman.

When the Vice-Chairman is absent or from any cause incapacitated from signing, such cheques shall be signed by any ex-officio member of the Committee other than the Chairman, on behalf of such Vice-Chairman.

The word "Chairman" in this section includes any officer for the time being in charge of the office of Chairman under a written order from the Chairman.

[2]172. The Collector shall forward to the Vice-Chairman of every Collector's Committee, as soon as possible after the close of each month, an account monthly of his receipts and disbursements on account of the [1][District Fund] account. during such month.

[2]173. Every Committee shall keep regular and detailed accounts Accounts of of the moneys received or applied by them under the provisions of this Committee. Act and of their application, and such accounts shall be, at all convenient times, open to the inspection of all members of the Committee.

[2]174. Every Committee shall appoint a standing Sub-Committee, Committee consisting of the Vice-Chairman and not less than two other members, to appoint a Sub-Comfor the audit of their accounts; and the accounts of each month shall be mittee to laid before the Sub-Committee as soon as possible after the close of such audit

^[1] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.
[2] See footnote [1] on p. 419, ante.

(Secs. 175-180.)

month; whereupon the said Sub-Committee shall proceed to audit the said accounts in such manner as the Lieutenant-Governor may direct, and to pass or to amend and correct the said accounts as may be necessary, and to pass them as so amended and corrected.

Sub-Comcall for vouchers and papers;

[1]175. For the purposes of every audit and examination of accounts mittee may under this Act, such Sub-Committee shall have power to call for all vouchers and papers which they may require.

and certify correctness of accounts.

[1] 176. When such Sub-Committee shall have audited and passed the accounts of any month as above provided, they shall certify the result and the correctness of the accounts as passed by them in such form as the Lieutenant-Governor may direct.

Accounts to to officer directed by the Lieutenant-Governor.

[1] 177. The accounts of each month, audited, passed and certified as be submitted in the last preceding section provided, shall be submitted by the Committee, not later than the twenty-fifth day of the following month to such officer as the Lieutenant-Governor may direct-

Vice-Chairman to prepare account of receipts and a report.

[1]178. As soon as possible after the close of each year, the Vice-Chairman of every Committee shall prepare a detailed account of the receipts and expenditure of the [2][District Fund] during such year; and also a report of the work done and in progress during such year, whether under the directions of the [3][District Committee] or of any Branch Committee other than a Branch Committee which has been vested with the full powers of a [3] [District Committee] under section 165.

Accounts to by Sub-Committee and transmitted to Lieutenant-Governor.

[1] 179. The annual accounts so prepared by the Vice-Chairman shall be certified be examined and certified by the Sub-Committee of audit, and, after such examination and certification, shall be laid with the said annual report before a special meeting of the Committee to be held within two months of the close of such year; and the Committee shall submit a copy of the said account with a similar report to the Commissioner for transmission to the Lieutenant-Governor, who shall cause such accounts, with an abstract of such report, together with such remarks as the Commissioner may have made thereon, to be published in the Calcutta Gazette.

The Committee may make

[4] 180. Every [3] [District Committee] may from time to time make, and when made, alter, add to or cancel, by-laws, [4] not inconsistent

^[1] See footnote [1] on p. 419, ante.
[2] The words "District Fund" were substituted for the words "District Road Fund" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (4), printed in Vol. III of this Code.
[3] The words "District Committee" were substituted for the words "District Road Committee" by ibid, s. 4 (5).
[4] For by-laws made under section 180, see the Bihar and Orissa Local Statutory

Rules and Orders, Vol. I, Pt. VI.

(Sec. 181.)

with the provisions of this Act, for all or any of the following purposes, by laws that is to say: approval of

- (1) regulating the traffic and providing for the safety and conve-Lieutenantnience of passengers on any road, water-channel or other Governor. means of communication under the charge of the Committee:
- (2) providing for the preservation of such roads, water-channels and other means of communication, and of the trees planted by, or under the charge of, the Committee.

On conviction before a Magistrate a fine may be imposed for the Fines. breach of any such by-laws:

Provided that no fine exceeds for any offence the sum of ten rupees or, in the case of a continuing offence, the sum of two rupees for every day during which such offence is continued.

Any by-law so made, and every alteration of, addition to and cancellation of, such by-law, shall require the sanction of the Lieutenant-Governor:

and, on such sanction being given, such by-law shall be published in By-laws to the Calcutta Gazette and in the vernacular of the district, as the Lieute- be published in Gazette. nant-Governor may direct;

and on such publication such by-law shall have the force of law.

CHAPTER XII.

MISCELLANEOUS.

[1]181. The Lieutenant-Governor may from time to time direct that Lieutenantsuch establishments shall be entertained, and such expenses incurred, Governor may give in the offices of the Board of Revenue[2], of the Commissioners of directions Divisions and of the Superintending Engineers, in any other office of as to control, in any office of account and in any treasury, or that such special ments, officers shall be employed and such expenses incurred by them, as may expenses, be necessary,

for the exercise of proper control over the proceedings of the Collectors and [8][District Committees] and Branch Committees in the discharge of their duties under this Act,

for the proper examination and checking of estimates furnished and accounts kept under this Act, and for the proper audit of such accounts,

^[1] See footnote [1] on p. 419, ante.

^[2] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

^[3] The words "District Committees" were substituted for the words "District Road Committees" by *ibid*, s. 4 (5).

(Sec. 182.)

and for the performance of the duties connected with the cash transactions of the [1] [District Committees],

and the Lieutenant-Governor may make rules providing for the recovery of the cost of the establishments so entertained, and the officers so employed, and of the expenses so incurred, from the several [1] [District Committees] in such proportions as he may think fit:

Provided that the total amount which any [1] [District Committee] is required to pay under this section shall not in any year exceed two per centum on the income of such Committee for such year.

PART IV.

CHAPTER XIII.

GENERAL.

Lieutenant-Governor empowered to prescribe forms and rules.

- 182. The Lieutenant-Governor may from time to time make, and, when made, from time to time alter, add to or cancel, any rules[2] not inconsistent with the provisions of this Act,--
 - [3] (a) regulating the performance of the duties of the [1] [District Committees] and Branch Committees, and of all persons employed under this Act, and in regard to the qualification, appointment, election and discharge of such persons;
 - [3] (b) prescribing the authorities by whom the execution of works of different classes respectively may be authorized and sanctioned;
 - [8](c) prescribing forms for the estimates, accounts, reports and statements required by this Act to be kept or made by the [1] [District Committee];
 - (d) prescribing forms of accounts to be kept by the Collector under this Act;
 - [3](e) providing for the submission and checking of any estimates or accounts and for the audit of such accounts as aforesaid;
 - (f) fixing the dates for payment of instalments of cess under sections 42 and 57[4];

Act 1 of 1916), s. 4 (6), printed in Vol. III of this Code.

[2] For rules made under section 182 (c) and (f), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[3] Clauses (a), (b), (c), (e), (g) and (h) of s. 182 were repealed by the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), s. 2, post, p. 522 and are now in force only in the Sonthal Parganas district. They will cease to be in force in that district when Ben. Act 3 of 1885 is extended to it.

[4] The power to fix dates for payment of instalments of cess under s. 57 is new

vested in the Board of Revenue—see that section as printed ante, p. 400.

^[1] The words "District Committee" were substituted for the words "District Road Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O.

(Schedule A.)

- [1](g) determining the amount of fees to be levied for supplying copies of proceedings of any [2] [District Committee] or Branch Committee as provided in section 127;
- [1](h) fixing the month in which the meeting mentioned in section 146 shall be held;
 - (i) and generally for the purposes of this Act.

Such rules shall be published in the Calcutta Gazette and shall thereupon have the force of law.

SCHEDILE A.

Form of Return prescribed by section 14.

Amount of Government revenue or rent payable by the estate or tenure:

Rs. A. P.

PART I.

District

Name by which the estate or tenure is known, and the number which it bears on the Collector's general register, or on any other register kept by the Collector-

Details of lands in the actual occupation or cultivation of the person submitting the return:

1	2	3	4	5
Pargana.	Name of village and <i>thana</i> in which the lands are situate.	Area of land [3] [if known.]	Deduct area of land situate within any municipality.	Annual value of remaining land.

^[4] Note.—In the body of this statement should be entered only nijjot lands and such uncultivated lands in the use and occupation of the maker of the return as are capable of assessment on their annual value.

The original note ran thus:-

^[1] See footnote [8] on p. 436, ante.
[2] The words "District Committee" were substituted for the words "District Road Committee" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (5), printed in Vol. III of this Code.
[3] The words in square brackets in the heading of column 3 of Part I were inserted by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 11,

post, p. 448.

[4] This note to Part I was substituted for the original note by ibid, s. 11.

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(Schedule A.)

PART II.

District

Name and number of estate or tenure as in Part I.

Details of lands held by cultivating raiyats paying direct to the persons submitting the return:—

1	2	3	4 .	5	6	7
Pargana.	Name of village and thana in which the lands are situate.	of village, thana		Annual rent.	Deduct rent of land included in any municipal- ity.	Balance of net rent assess- able.

PART III.

District

Name and number of estate or tenure as in Part I.

Details of the tenure-holders paying to the person submitting the return:—

1	2	3	4	5	6	7	8
Name of tenure-holder and person paying rent for him borne on the books of holder of estate or tenure.	Name of village, thana and district in which such person resides.	Name of village and thana in which tenure is situated.	Name of village and thana in	Area, if known.	Annual rent paid by tenure- holder.	Deduct rent of land included in any municipality.	Balance of net rent assess- able.

^[1] The words in square brackets in the heading of column 4 of Part II were added by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 18, post. p. 448.

(Schedule B.)

PART IV.

District

Name and number of estate or tenure as in Part I.

Details of lands included in the estate or tenure of the person submitting the return which are held by others than himself but for which no rent is paid:—

1	2	3	4	5	6	7
Pargana in which situate.	Name of village and thana in which situated.	Name of holder, and owner, if known.	Name of village, thana and district in which the holder resides.	Area, if known.	Deduct area of land included in any munici- pality.	Annual value of remaining land.
:		,				

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed.

N.B.—This return must be signed by the holder or his authorized agent, whose address must also be given.

SCHEDULE B.

FORM No. I.

Form of Notice upon a Revenue-paying Estate or Rent-paying Tenure under section 17.

District of

Notice under section 17 of the Cess Act, 1880.

The holders of estate or tenure (description to be filled in) in the district of and all others interested therei are hereby required to lodge in the office of the Collector of the said district a return, in the form hereunto annexed, of all lands comprised in such estate or tenure and the rents paid therefor. Such return must

(Schedule B.)

be signed by such holder or his authorized agent, and be so lodged within the time mentioned below under a penalty of a daily fine which may amount to fifty rupees on each such holder for every day after the expiry of such time or of any extended time which may be allowed by the Collector on application made to him, until such return shall be lodged. Notice is hereby given that no rents due to the holders of the said estate (or tenure) can be recovered by suit after such time until such return be so lodged.

If the annual amount of revenue or rent payable on the estate or tenure to which this notice refers does not exceed Rs. 500, the holders are required to lodge the return within six weeks of the service of this notice.

If such amount exceeds Rs. 500, within three months of such service. If for any good reason the holders will be unable to lodge the return within the time allowed, they should apply to the Collector for extension of such time.

Collector's Office,

(Sd.) A. B.,

Dated

Collector.

N.B.—To this notice shall be annexed forms of Parts I, II, III and IV of the return which is mentioned in Schedule A.

FORM NO. II.

Form of Notice upon a Revenue-free Estate or Rent-free Tenure under section 17.

District of

Notice under section 17 of the Cess Act, 1880.

The holder of the revenue-free estate or rent-free tenure (description to be filled in) in the district of and all others interested therein are hereby required to lodge in the office of the Collector of the said district a return, in the form hereunto annexed, of all lands comprised in such estate or tenure. Such return must be signed by such holder or his authorized agent, and be so lodged within the time mentioned below under a penalty of a daily fine which may amount to fifty rupees on each such holder for every day after the expiry of such time or of any extended time which may be allowed by the Collector on application made to him until such return shall be lodged.

Notice is hereby given that no rents due to the holders of the said estate (or tenure) can be recovered by suit after such time until such return be so lodged.

(Schedule C.)

If the gross annual rental of the estate or tenure to which this notice refers does not exceed Rs. 500, the holders are required to lodge the return within six weeks of the service of this notice.

If the gross rental exceeds Rs. 500, within three months of such service.

If for any good reason the holders will be unable to lodge the return within the time allowed, they should apply to the Collector for extension of such time.

COLLECTOR'S OFFICE,

(Sd.) A. B.,

Dated

Collector.

N.B.—To this notice shall be annexed forms of Parts I, II, III and IV of the return which is mentioned in Schedule A.

SCHEDULE C.

Form of Notice under section 33.

District of

Notice under section 33 of the Cess act, 1880.

The owner, chief agent, manager or occupier of (give the name by which the concern or property is known) situated in the district of , is hereby required to lodge in the office of the Collector of of a return in the form hereunto annexed, showing the amount of land under cultivation at the date of this return in the said . Such return must be signed by him and be lodged within the space of two months from the service of this notice (unless within the said two months such owner, chief agent, manager or occupier obtain from the Collector an extension of the said space of two months), under penalty of a daily fine of fifty rupees for every day after the expiry of such period or extension thereof until such return shall be presented.

Form of return to be annexed to the Notice.

District

Details of lands acquired under any rules for the sale, lease, grant or clearance of waste lands or held direct from Government and used

(Schedule D.)

for the cultivation of tea, coffee or cinchona, under the control of the person submitting the return:—

1	2	3	4	5	6	7
Districts Parganas and thanas		Designation by which the estate, lot or grant is known,	Name of owner, agent,	Entire area of	Area or areas of lands	Rs. 10 per acre of
in which t	he lands lie.	and the number it bears on any register kept by the Collector.		land.	under cultiva- tion.	land in [1] [column 6.]

I, $X \cdot Y \cdot Z \cdot$, do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed.

N.B.—This return must be signed by the owner, chief agent, manager or occupier.

SCHEDULE D.

Form of Notice under section 52.

Notice to Holders of Lands held Rent-free under section 52 of the Cess Act, 1880.

Notice is hereby given to all concerned that the lands specified in the annexed extracts from valuation-rolls of estates and tenures have been entered by the holders of such estates and tenures in the valuation-returns of their estates and tenures under the Cess Act, 1880, and have been valued as shown in the extracts.

Every owner and holder of any land entered in these extracts may appear before the Collector within one month of the publication of this notice, and may object to the amount at which his land has been valued.

If no such objection is made, the owners and holders of lands will be bound to pay year by year to the holder of the estate or tenure in

^[1] The word and figure in square brackets in the heading of column 7 were substituted for the word and figure "column 5" by the Bengal Cess (Amendment No. 2) Act, 1881 (Ben. Act 2 of 1881), s. 13, post, p. 448.

(Schedule E.)

which his land has been entered the amount of [1] [local cess] calculated on the annual value of such land as entered in these extracts at the full rate which may be fixed for the year in the district.

If any instalment of the cess due upon any of the lands included in these extracts is not paid to the holder of the estate or tenure on or before the date which the [2][Board of Revenue] may fix for the payment of such instalment, the holder of the estate or tenure will be entitled to recover double the amount due with interest and all costs of anit.

SCHEDULE E.

Form of Notice under section 72.

District of

Notice under section 72 of the Cess Act, 1880.

THE owner, chief agent, manager or occupier of the (give the designation of the property), situated in the district of required to lodge in the office of the Collector of the district of a return in the form hereunto annexed, showing the net profits of calculated on the average of the profits of the last three years for which accounts have been made up. [3][Such return must be signed by him or his authorized agent, and be so lodged within the space of two months from service of this notice under penalty of a daily fine which may amount to not more than fifty rupees (payable by each such owner, chief agent, manager or occupier) for every day after the expiry of such period or of such extension thereof as may be allowed by the Collector, on application made to him, until such return shall be lodged or until the annual net profits of the property in respect of which this notice is served shall have been otherwise ascertained and determined by the Collector.

COLLECTOR'S OFFICE.

(Sd.) A. B.,

Dated

Collector.

As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this

^[1] The words "local cess" were substituted for the words "road cess and public works cess" by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 4 (1) (a), printed in Vol. III of this Code.

[2] The words "Board of Revenue" were substituted for the words "Leutenant-Governor" by ibid, s. 8.

^[3] The words in square brackets in Schedule E were, by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. and O. Act 1 of 1916), s. 21, printed in Vol. III of this Code, substituted for the words "such return must be signed by him or his authorized agent, and be lodged within the space of two months from service of this notice, unless within the said two months an extension of the time allowed is obtained from the Collector."

(Schedule F.)

Annexed form of Return.

District

Detail of yearly profits of mines, quarries, railways and tramways or other immovable property in the possession or under the control of the person submitting the return:—

1	2	3	4		
District	Parganas	Name of holder	Annual net profits per annum on the average of the last three years		
in which the property lies.		or manager.	for which accounts have been made up.		

I, X. Y. Z., do declare that the statements contained in the above return are true to the best of my knowledge, information and belief.

Signed.

N. B.—This return must be signed by the owner, chief agent, manager or occupier.

SCHEDULE F.

Form of Notice under section 99.

District of

Notice under section 99 of the Cess Act, 1880.

THE occupiers, tenure-holders, under-tenants and raiyats on estate or tenure (the estate, tenure or lands to be here clearly designated) are hereby prehibited, until further order of the Collector, from making any payment of rent now or hereafter to become due from them in respect of any land comprised within such estate or tenure except to the Collector of the said district or to (name of person) hereby appointed to receive the same. The Collector will grant receipts for all sums paid; and such receipts will, under the provisions of the above Act, be a valid discharge, to the extent of the sums covered by such receipts, for rent due, or hereafter to become due, as above stated by the holders of such receipts. All payments, except to the Collector, until further order, will be null and void.

(Sd.) A. B., Collector.

BENGAL ACT 2 OF 1881.

[THE BENGAL CESS (AMENDMENT No. 2) ACT, 1881.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. Amendment of section 9 of the Cess Act, 1880.
- 2. Amendment of section 10
- 3. Amendment of section 13.
- 4. Introduction of new section after section 40.
- 5. Amendment of section 42, clause (1).
- 6. Amendment of section 43.
- 7. Addition to section 44.
- 8. Amendment of section 45.
- 9. Amendment of section 46.
- 10. Amendment of section 108.
- 11. Amendment of Schedule A, Part I.
- 12. Amendment of Schedule A, Part II.
- 13. Amendment of Schedule C.

BENGAL ACT 2 OF 1881.

THE BENGAL CESS (AMENDMENT No. 2) ACT, 1881. [1]

(4th May, 1881.)

An Act to amend the Cess Act, 1880.[2]

Ben. Act 9 of 1880.

Whereas it is expedient to amend the Cess Act, 1880,[2] passed by Preamble. the Lieutenant-Governor of Bengal in Council; It is hereby enacted as follows:--

- [3]1. In section 9 of the Cess Act, 1880, for the figures "111" the Amendment figures "109" shall be substituted.
- [4]2. In section 10, after the words "public works cess," the words Amendment "and all interest paid thereon" shall be inserted.

3. In section 13, after the words " in accordance with any valua- Amendment tion" the words "or re-valuation" shall be inserted.

4. After section 40 the following section shall be inserted, name- Introduction ly :--

40A. [Printed ante, p. 389.]

- 5. In section 42, clause (1), for the words "for the payment of the Amendment instalments", the following shall be substituted:--" under the provi- of section sions of section 3 of Act 11 of 1859, or of any similar Act at the time being in force for the payment of arrears ".
- 6. In section 43, after the word "proportionately" the words "to Amendment the land-revenue" shall be inserted.

of section 43.

of the Cess Act, 1880.

of section 10.

of section

of new sec-

tion after

section 40.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I-see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1881, Pt. IV, p. 3; and for Proceedings in Council, see ibid, 1881, Supplement, pp. 144, 148, 200 and 206.

The Act has been declared, by notification under the Scheduled Districts Act, 1874 (14 of 1874), s. 3, to be in force in the Districts of Hazaribagh, Ranchi, Palamau and Manbhum in the Chota Nagpur Division, see Vol. IV, Pt. III.

Its operation is barred in the District of Angul by the Angul Laws Regulation,, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

^[2] Printed ante, p. 369.

^[3] The provision made in s. 1 of the Act has been superseded by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 7, in Vol. III of this

^[4] The provision made in s. 2 of this Act has been repealed by ibid, s. 3(i).

The Bengal Cess (Amendment No. 2) Act, 1881.

(Secs. 7-13.)

In clause 3 of the same section, for the words "the last preceding section" the words "this section" shall be substituted.

Addition to section 44.

7. To section 44 the following clause shall be added:—
(5) [Printed ante, p. 393.]

Amendment of section 45. 8. In section 45, after the word "twelve" the words "and a half" shall be inserted.

Amendment of section 46. 9. In section 46, clause (3), for the words "preceding section" the words "preceding clause" shall be substituted.

Amendment
of section
108.

[1]10. In section 108, after the words "cesses under this Act," the words "not being interest levied in respect of public works cess," shall be inserted.

Amendment of Schedule A, Part I.

11. In the heading of column 3 of Part I, Schedule A, after the word "land" the words "if known" shall be inserted.

For the note which stands below Part I of the same Schedule the following note shall be substituted:—

[Printed ante, p. 437.]

Amendment of Schedule A. Part II.

Amendment of Schedule

Ci.

- 12. In the heading of column 4 of Part II, Schedule A, after the word "occupied" the words "if known" shall be added.
- 13. In the heading of column 7 of the form of return in Schedule C, for the word and figure "column 5" the word and figure "column 6" shall be substituted.

^[1] The provision made in s. 10 of this Act has been repealed by the Bihar and Orissa Cess (Amendment) Act, 1916, s. 3(ii), in Vol. III of this Code.

BENGAL ACT 3 OF 1881.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1881.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. Construction. (Commencement.) Repealed.
- (Repealed.)
 Amendment of sections 16 and 17 of Ben. Act 9 of 1879.
 Amendment of section 23.

- 4. Amendment of section 25.
 5. Amendment of sections 48 and 49.
 6. Amendment of section 50.
 7. Amendment of section 55.
 8. Amendment of section 58.
 9. New section introduced between sections 58 and 59.
 10. New section introduced after section 63.
 11. New section introduced after section 65.



BENGAL ACT 3 OF 1881.

[The Bengal Court of Wards (Amendment) Act, 1881.][1]

(25th May, 1881.)

An Act to amend the Court of Wards Act, 1879.[2]

Ben. Act 9 Whereas it is expedient to amend the Court of Wards Act, 1879; [2] Preamble. It is enacted as follows:—

1. This Act shall be read and taken as part of the Court of Wards Construction.

Act, 1879.

(Commencement.) Rep. by the Amending Act, 1897 (5 of 1897).

- 2. (Repeal.) Rep. by the Amending Act, 1897 (5 of 1897).
- 3. For sections 16 and 17[3] of Bengal Act 9 of 1879 the following Amendment of sections shall be substituted:—

 16. [Printed ante, p. 287.]

 17. Amendment of sections 16 and 17 of Ben. Act 9 of 1879.
- 4. For section 23 of the same Act the following sections shall be Amendment of section substituted, namely:—

 23.

23, 23A. [Printed ante, pp. 288-289.]

5. The following sections shall be substituted for sections 48 and 49 Amendment of the same Act:—

48 and 49.

48, 49. [Printed ante, pp. 295-296.]

- 6. In section 50 of the same Act, for the word "person" the word Amendment "male" shall be substituted, and for the word and figures "section of section 49" the word and figures "section 48" shall be substituted.
- 7. In section 55 of the same Act, after the words "shall be brought Amendment on behalf of any ward," the words "by a manager" shall be inserted. of section 55.

[1] Short Title.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LOCAL EXTENT.—Since this Act is (see section 1) to be "read and taken as part of"
Bengal Act 9 of 1879, its local extent is the same as that of the latter Act, as to which
see footnote [1] on that Act, p. 279.
[2] Printed ante, p. 279.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette. 1881, Pt. IV, p. 9, and for Proceedings in Council, see ibid, Supplement, pp. 143, 189, 243, 255 and 285.

^[13] So much of Bengal Act 3 of 1881 as related to s. 17 of the Courts of Wards Act, 1879 (Ben. Act 9 of 1879), was repealed by s. 9 of the Government Management of Private Estates Act, 1892 (10 of 1892), printed in General Acts, 1887-97, Ed. 1928, p. 206.

The Bengal Court of Wards (Amendment) Act, 1881. [Ben. Act 3 of 1881.]

(Secs. 8-11.)

Amendment of section 58.

8. To section 58 of the same Act the following words shall be added, namely:-

[Printed ante, p. 299.]

9. The following section shall be inserted between section 58 and New section introduced section 59 of the same Act:between

sections 58 and 59.

58A. [Printed ante, p. 299.]

10. Instead of the repealed section 63 of the same Act, the follow-New section substituted ing section shall be read, namely:for repealed

63. [Printed ante, p. 300.] section 63.

11. After section 65 of the same Act, the following section shall be New section introduced inserted, namely:-after section 65.

65A. [Printed ante, p. 301.]

BENGAL ACT 2 OF 1882.

(THE BENGAL EMBANAMENT ACT, 1882.)

CONTENTS.

PART I.

PRELIMINARY.

PREAMBLE.

SECTION.

- 1. Short title. Local Extent.
 - (Commencement.) Repealed.
- 2. Repeal of former Acts.
- 3. Interpretation.
- 4. Public embankments, etc., to vest in Government.
- 5. Survey of lands hitherto used for obtaining earth for repairs.
- 6. Notification.

PART II.

Powers of Collector and Procedure Thereon; Embankment Committees.

- 7. Powers of Collector.
 - Taking charge of embankment by Government.
 Removal of embankment or obstruction.
- (3) Changing line of embankment.
 (4) Improvement of drainage.
 (5) Alteration of roads and construction of water-courses.
- 8. Form of notice.
- 9. Proclamation to be published for thirty days.
- 10. Hearing of objections to works.11. Order after inquiry.
- 12. Order of Commissioner.13. Order of Board.

- 13. Order of Lieutenant-Governor.
 14. Order of Lieutenant-Governor.
 15. Special powers which may be conferred by Lieutenant-Governor.
 16. (Repealed.)
 17. Procedure of Collector.
- - Expenses of alteration or construction.
- 18. Application for new sluices, embankments or drainage.
- 19. Power to remove houses, etc.
- 20. Authority to take proceedings where lands likely to be affected by the works are in different districts.
- Lieutenant-Governor may appoint Embankment Committee.
 Consultation of Committee by Collector.
 Business of Committee.

- 24. Reference to Commissioner.

PART III.

PROCEDURE IN CASES OF IMMINENT DANGER TO LIFE OR PROPERTY.

- 25. Proceedings in emergencies.
- 26. Restoration of embankments, etc.
- 27. Authority to take proceedings where lands in different districts.

PART IV.

POWERS OF THE ENGINEER.

SECTION.

- 28. Engineer subject to control of Collector.
- 29. Power to Engineer to act in urgent cases.

30. Power to make repairs.

- 31. Power to make temporary roadway, water-course or dam.
- 32. Sluices to be opened or shut under authority of the Engineer.

33. Power to enter and survey land, etc. Power to mark out line. Power to clear land.

Previous notice of entry.

Payment for damage.

34. Power to take earth from lands.

35. Procedure where crops on such lands.

36. Acquisition of land made permanently unfit for cultivation.

PART V.

Acquisition of Lands and Compensation.

Acquisition of land.
 Compensation for consequential damage.

39. Limitation to claim for compensation.
40. Procedure for determining compensation.

41. Matters to be considered in determining compensation. Matters not to be considered in determining compensation.

PART VI.

COST OF WORKS, PROCEEDINGS, ETC.

1.—Ascertainment thereof.

- 42. Embankments in Schedule D.43. Exclusion from Schedule D.
- Addition to Schedule D.
- 44. Contribution of public money towards the maintenance of the embankments in the parganas entered in Schedule E to be continued.
- 45. If such embankments are declared to be public, Collector to keep a separate account.
- 46. Contribution may be discontinued if it be found unnecessary for the public interest to maintain the embankments.

- 47. Estimates and specifications to be prepared.
 48. Preparation of further estimates and specifications.
 49. Estimates and specifications to be open to inspection.
 50. Notice of receipt of estimates and specifications.
 51. Preparation of accounts and Engineer's certificate of expenses.
- 52. Notices and inquiry into objections.
- 53. Total sum payable. Interest.

2.-Liability for the Costs, and Apportionment thereof.

54. Parties liable to pay.

Proviso in respect of the parganas in Schedule E.

55. Recovery from under-tenants.
56. Notice to be given before apportionment.

57. Names of tenure-holders.

- 58. Apportionment amongst zamindars.
- 59. Apportionment amongst tenure-holders.
- 60. Provisions as to lands held without payment of rent not being estates.

61. Amount apportioned payable by instalments.

Interest,

SECTION.

62. Apportionment of further expenses.

63. Alternative power of apportioning estimated expenditure for a series of years.

64. Period included in the last section what to include.

65. Works in respect of which such estimate may be made. Recovery of costs of new works. 66. Mode of apportionment.

67. Payment of sum apportioned.

68. Final order of apportionment.

3.-Recovery thereof.

69. Publication of final order of apportionment.

70. Recovery of sums apportioned.

71. Effect of opening separate account under Act 11 of 1859 or Ben. Act 7 of 1876

72. Liability of estate for sum apportioned.

73. Amount apportioned may be raised by leasing or mortgaging estate.

74. Recovery by zamindars and tenure-holders.

PART VII.

PENALTIES.

75. Penalty for obstructing persons in exercise of powers conferred by Act.

76. Penalty for unauthorized interference with embankments or drainage.

Penalty for unauthorized interference with embankments or drainage in prohibited tract.

Penalty for abetment of such acts.

77. Penalties for injuring embankments, etc.
78. Penalties for diverting rivers or permitting cattle to graze on embankments, etc

79. Obstructions to be removed and damage repaired.

PART VIII.

MISCELLANEOUS.

80. Mode of publishing proclamation and issuing notices.

81. Service of special notices.

82. Powers of Collector and Commissioner on inquiry and appeal. 83. No proceedings to be impeached for mistake or want of form.

84. Appeal from orders.

85. General control of Commissioner and Government.

86. Orders to be final.

87. Disposal of lands no longer required for embankments.

88. Collector may delegate any of his powers to a Deputy Collector.

89. Jurisdiction.

90. Power to make, alter and cancel rules.

Publication of rules.

91. Saving of operation of certain acts.

PART IX.

SPECIAL PROVISIONS FOR THE PROVINCE OF ORISSA.

- 92. Powers conferred on Superintendent of Embankments in Orissa.
- 93. Power to Engineer to act in urgent cases.
- 94. Sections made applicable to Orissa.

SCHEDULE I.

SCHEDULE II.

SCHEDULE Mi.

BENGAL ACT 2 OF 1882.

THE BENGAL EMBANKMENT ACT, 1882.]

(21st June, 1882.)

An Act to amend the law relating to Embankments and Water-courses.

Whereas it is expedient to make better provision for the construc- Preamble. tion, maintenance and management of embankments and water-courses in the territories subject to the Lieutenant-Governor of Bengal[1]; It is enacted as follows:-

PART I.

PRELIMINARY.

Short title. 1. This Act may be called the Bengal Embankment Act, 1882. It extends to the whole of the territories subject to the Lieutenant-Local extent. Governor of Bengal,[1] except [the Sundarbans, as defined under the provisions of clause 2, section 13, Regulation 3 of 1828[2] and the province of Orissa, save as otherwise expressly provided in Part IX.

(Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).

* [3] Bengal Act 6 of 1873[4] (to amend the law Repeal of relating to embankments and water-courses), with the exception of the former Acts. sections set out and schedules specified in Schedule I to this Act annexed, shall be repealed.

Gazette, 1882, Pt. IV, p. 12; and for Proceedings in Council, see ibid, Supplement, pages 46, 91, 303 and 329.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal except (the Sundarbans and) "the Province of Orissa," (see s. 1), but ss. 4 to 6, 25, 26, 34 and 76 extend to the latter Province—see Pt. IX, ss. 92 to 94, post, pp. 483-484.

It has been declared to be in force in the Sonthal Parganas, see Vol. IV, Pt. IV; but its application is barred in the district of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

FURTHER ENACTMENTS.—For another enactment relating to embankments (except in

the Sundarbans), see the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), ante, p. 161.

For enactments relating to embankments in the Orissa Division, see-The Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code. The Bengal Embankment Act, 1866 (Ben. Act 7 of 1866), ante, p. 59.

[1] This includes the present province of Bihar and Orissa except the district of Sambalpur.

[2] Printed in Vol. I of this Code. [3] Formal words repealed by the Amending Act, 1903 (1 of 1903), printed in Vol. I of the Code, are omitted.
[4] The Bengal Embankment Act, 1873. It is printed ante, p. 161.

(Sec. 3.)

The references in the said sections, which are mentioned in Schedule II to this Act annexed, shall be read as if the references were made to the portions of this Act mentioned against such references respectively in the third column of such schedule.

Sections 80 and 81 of this Act shall be applicable respectively to the proclamation and notice mentioned in sections 26 and 28, Bengal Act 6 of 1873.[1]

Interpretation.

3. The following words shall, for the purposes of this Act, have the meanings hereby declared, save where, from the context, a contrary intention appears:—

" Collector."

"Collector" means any Revenue-officer in independent charge of a district or portion of a district, or specially appointed[2] by the Lieutenant-Governor of Bengal to perform the functions of a Collector under this Act:

" District."

"district" means the local area throughout which a Collector is authorized to exercise his ordinary functions:

" Embankment."

"embankment" includes-

every bank, dam, wall and dyke made or used for excluding water from, or for retaining water upon, any land;

every sluice, spur, groyne, training-wall or other work annexed to, or portion of, any such embankment;

every bank, dam, dyke, wall, groyne or spur made or erected for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or

and also all buildings intended for purposes of inspection and supervision:

" Estate."

"estate" means any land or share in land included under one entry on the general register of revenue-paying lands and of revenue-free lands prepared and maintained by the Collector of a district under the Land Registration Act, 1876,[8] or any similar law for the time being Ben. Act 7 in force:

" Land."

" land " includes interests in land and benefits arising out of land, and things attached to the earth, or permanently fastened to anything attached to the earth:

" Public embankment."

" public embankment " means an embankment maintained by the officers of Government:

" Public watercourse."

"public water-course" means a water-course under the charge of the officers of Government:

" Section."

" section " means a section of this Act:

[3] Printed ante, p. 237.

^[1] The Bengal Embankment Act, 1873. It is printed ante, p. 161.
[2] For an appointment made under this clause of s. 3, see the Bihar and Orissa.

Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 4-5.)

"tenure" includes all interests in land which are held permanent- "Tenure." ly at a fixed rental, or which are held rent-free, other than estates as above defined:

"the Engineer" means the Engineer in charge of the public em- "The Enbankments of the district, or any part thereof, or any Engineer spe-gineer. cially appointed[1] by the Lieutenant-Governor of Bengal to perform the functions of an Engineer under this Act in respect of any tract of country or of any works:

"water-course" includes a line of drainage, weir, culvert, pipe or "Waterother channel, whether natural or artificial, for the passage of water: course."

"zamindar" means all or any of the holders of an estate; and, "Zaminwhere two or more zamindars are jointly holders thereof, they shall be dar." jointly and severally liable under this Act.

Explanation .- For the purposes of Part VI the Government shall be deemed to be the zamindar-

(a) of every estate of which the zamindari title is not vested elsewhere than in the Government;

(b) of every estate which is let in farm or held khas under the provisions of s. 43 of Regulation 8 of 1793[2] in consequence of the proprietor refusing or omitting to engage for the settlement thereof.

[8]4. Every public embankment and every public water-course, and Public emall land, earth, pathways, gates, bermes and hedges belonging to, or bankments, etc., to vest forming part of, or standing on, any such embankment, or water- in Governcourse and every embanked tow-path maintained by Government, shall ment. vest in the Government.

The embankments mentioned in Schedule D annexed to Bengal Act 6 of 1873[4] and every embankment and water-course which may be included in such Schedule under section 43 of this Act, and every embanked tow-path as aforesaid, shall be held on behalf of the Government; and all other public embankments and water-courses shall be held by Government on behalf of the persons interested in the lands to be protected or benefited by such embankments or water-courses, subject to the provisions of section 87; and all moneys received on account of such lands shall be credited to the cost of the construction and maintenance of such embankments and water-courses respectively.

[3]5. All plots or parcels of land which, before the commencement Survey of of this Act, have been used for the purpose of obtaining earth or other to used for materials for the repair of any public embankment, water-course or obtaining

repairs.

^[1] For a list of appointments made under this clause of s. 3, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[2] The Bengal Decennial Settlement Regulation, 1793. It is printed in Vol. I of this Code.

^[3] Sections 4 and 5 extend to the Division of Orissa, see s. 94, post, p. 484.

^[4] Printed ante, p. 161.

(Secs. 6-7.)

embanked tow-path as aforesaid, or which by agreement have been substituted for such lands, shall be deemed to be at the disposal of the Government for such purpose, without payment of compensation for the use or removal of such earth or other materials.

The Collector may cause all such plots or parcels to be ascertained, surveyed and demarcated.

Notification.

[1] 6. The Lieutenant-Governor may, from time to time, by a notification in the Calcutta Gazette, declare[2] the limits of any tract within which the provisions of clause (b), section 76, shall take effect;

and the said provisions shall take effect one month after the publication of such notification.

As soon as possible after the said publication, the Collector shall cause a translation of the notification in the vernacular to be published in the manner prescribed in section 80.

PART II.

Powers of Collector and Procedure Thereon; Embankment Committees.

Powers of Collector.

7. Subject to the provisions of Part III, whenever it shall appear to the Collector that any of the following acts should be done, or works executed, that is to say:

Taking charge of embankment by Government.

(1) that any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or that any embankment or water-course which is necessary for the protection or drainage of the neighbouring country, should be taken charge of and maintained by the officers of Government;

Removal of embankment or obstruction.

(2) that any embankment, or any obstruction of any kind, which endangers the stability of a public embankment or the safety of any town or village, or which is likely to cause loss of property by interfering with the general drainage or the flood drainage of any tract of land, should be removed or altered;

Changing line of embank-ment.

(3) that the line of any public embankment should be changed or lengthened, or that any public embankment should be renewed, or that a new embankment should be constructed instead of any public embankment, or that any embankment should be constructed for the protection of any lands or for the improvement of any water-course, or that a sluice in any public embankment should be made;

Improvement of drainage. (4) that any sluice or water-course should be made, or that any

^[1] Section 6 extends to the Divsion of Orissa, see s. 94, post, p. 484.
[2] For a list of declarations made under s. 6, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 8-12.)

public water-course should be altered for the improvement of the public health, or for the protection of any village or cultivable land;

(5) that any road which interferes with the drainage of any tract Alteration of of land should be altered, or that any water-course under or through construction such road should be constructed;

of watercourses.

he shall cause to be prepared estimates of the cost of such works, including such proportion of the establishment charges as may be chargeable to the works in accordance with the rules for the time being in force under this Act, or as may be especially ordered by the Lieutenant-Governor together with such plans and specifications of the same as may be required. He shall also cause to be prepared from the survey map of the district a map showing the boundaries of the lands likely to be affected by the said acts and works, and he shall cause a general notice to be given of his intention to cause such works to be executed.

8. Such general notice shall as far as possible be in the form, and Form of state the particulars mentioned, in Schedule III to this Act annexed; notice. and to it shall be annexed a list of all estates and villages, as far as is known, which are likely to be affected by the proposed work, and to be chargeable in respect of the expenses of executing the same; and a copy of the said estimates, specifications and plans, together with a copy of the map as aforesaid, shall be deposited in the office of the Collector, and shall be open to the inspection of any person interested, who shall be allowed to take copies thereof.

9. Every such general notice shall be published in the manner pro- Proclamation vided by section 80 not less than thirty days before the day appointed for lished for hearing the persons interested.

to be pubthirty

10. The Collector shall, on the day appointed for the hearing, or Hearing of on any subsequent day to which the hearing may be adjourned, hold an objections to works. inquiry and hear the objections of any persons who may appear, recording such evidence as he may deem necessary.

11. After holding such inquiry the Collector shall proceed as fol- Order after inquiry. lows, that is to say:--

- (a) if he considers that the proposed act or work, or any modification of the same, should not be done or executed, he shall record his opinion to that effect;
- (b) if he considers that the proposed act or work, or any modification of it, should be done or executed, he shall submit a report to the Commissioner of the Division.
- 12. On receipt of a report submitted under section 11, the Commis-Order of sioner, after making any further inquiry which he may deem necessary, sioner. may record an order refusing to support the proposal made in the report of such Collector for the execution of such work;

(Secs. 13-17.)

or may forward the report submitted by such Collector, together with any remarks he may think proper, for the consideration of the Board of Revenue.[1]

Order of Board.

13. On receipt of the report forwarded by the Commissioner, the Board of Revenue, [1] after making any further inquiry which they may deem necessary, may record an order refusing to support the proposal made in the report of such Collector or Commissioner,

or may submit such report, together with any remarks which may be thought proper, for the consideration of the Lieutenant-Governor.

Order of Licutenant-Governor.

14. On receipt of such report from the Board[1] the Lieutenant-Governor shall proceed to consider the same, and may order[2] that the proposed act or the proposed work, or any modification thereof, be done or executed.

Every such order shall be notified in the Calcutta Gazette.

Special powers. which may be conferred by Lieutenant-Governor.

15. Notwithstanding anything contained in this Part, the Lieutenant-Governor may by a special order passed in respect of any act or work specified in section 7, or by a general order in respect of any class of such acts or works, authorize the Collector, after holding such inquiry as is prescribed in section 10, without previous reference to any superior authority, to pass an order that such act or work or any modification thereof may be done or executed; or the Lieutenant-Governor may authorize the Commissioner or the Board of Revenue[1] to pass such order without previous reference to any superior authority:

Provided that every order passed under the authorization of the Lieutenant-Governor, given under this section, shall be subject to the provisions of section 85.

16. (Alteration of railroads and construction of water-courses.) Rep. by the Indian Railways Act, 1890 (9 of 1890).

Procedure of Collector.

17. Whenever an order shall have been passed in cases falling under section 7, clause (5), [3]* directing that any road **[4]*** which interferes with the drainage of any tract of land be altered, or that any water-course be constructed under or through such road [4] * * the Collector may require the person in charge of such road [4] * * to make such alteration or construct such water-course, and in the event of such person failing to comply with such requisition in such manner and within such time as the Collector shall prescribe, the Collector may cause the road[4]

[2] For a list of orders made under s. 14, see the Bihar and Orissa Local Statutory

Rules and Orders, Vol. I, Pt. VI.

[8] The words "or under the section last preceding" in s. 17, were repealed by the Indian Railways Act, 1890 (9 of 1890), s. 2, First Sch. printed in General Acts, 1887-97, Ed. 1928, p. 115, and are omitted.

[4] The words "or railroad," in s. 17, were repealed by ibid, and are cmitted.

^[1] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 18-19.)

altered or the water-course to be constructed by the officers of Government.

*[1]

The expenses of such alteration or construction shall be borne by Expenses so far as the same tion or the person in charge of the said road[2] shall have been incurred on account of insufficient provision having construction been made at the time of the construction of the said road[2] for the natural drainage then existing, and the remainder of the expense, if any, shall be charged upon, and recovered from, the proprietors of the lands benefited in accordance with the provisions of this Act. If any dispute arises as to the apportionment of expenses under this clause between the person in charge of a road[2] the proprietors of the lands benefited, the dispute shall be decided by the Lieutenant-Governor, whose decision shall be final.

- 18. (a) If any person desires that a sluice be made in any public Application embankment for the purpose of drainage or irrigation,
- (b) or if, within any tract of country which has been included embankwithin a notification under section 6, any person desires that any new drainage. embankment be erected, that any existing embankment be lengthened, enlarged, repaired or removed, or that the line of any embankment be altered, or that any new water-course be made, or that any water-course be obstructed or diverted,

he may make an application in writing to the Collector.

The application shall contain such particulars of the land likely to be affected by the work as may enable the Collector to judge of the idvantage which may be derived from the project.

If it should appear to the Collector that the work applied for is one which may probably be executed with advantage, the procedure mengioned in the seventh and following sections of this Act shall be followed in respect of the proposed work.

19. Whenever the Collector, after considering any report of the Fower to Engineer or otherwise, shall be of opinion that the removal of any remove houses, etc. trees, houses, huts or other buildings, situated between a public embankment and the river, is necessary,

for new

sluices.

or that land is required for widening an existing embanked towpath, or for constructing a new embanked tow-path,

^[1] The proviso to the first paragraph of s. 17 was repeated by the Indian Railways Act, 1890 (9 of 1890), s. 2, First Sch., printed in General Acts, 1887-97, Ed. 1928, p. 115, and is omitted. It ran as follows:—

"Provided that in the case of a railroad no such work shall be undertaken by the officers of Government without the permission of the Lieutenant-Governor previously

^[2] The words "or railroad," in s. 17, were repealed by ibid, and are omitted.

(Secs. 20-24.)

he shall[1] make a report to that effect to the Commissioner, accompanied by a detailed statement of the trees, houses, huts or other buildings to be removed, or of the land required.

Such report shall be submitted in the usual manner through the Board of Revenue[2] to the Lieutenant-Governor, in order that proceedings may be taken for obtaining possession of such trees, houses, huts and buildings or land in accordance with the provisions of the Land Acquisition Act, 10 of 1870, or other law[3] for the time being in force for the acquisition of land for public purposes.

Authority to take affected by the works are in different districts.

Lieutenant-Governor

Embank-

mittee by

Collector.

Consultation of Com-

ment Committee.

20. If any works proposed to be undertaken in accordance with this Act, or the lands which are likely to be affected by such works, are where lands situated within the limits of different districts, the Collector of any likely to be district within which are district within which any portion of such works or lands is situated may apply to the Commissioner of the division for authority to proceed in such matter; and the Commissioner of the division, with the concurrence of any other Commissioner within whose division any such lands are situated, may give authority to such Collector, or to any other Collector within whose district any portion of such lands is situated, to carry out all or any proceedings under this Act in respect of all the lands affected by such works.

21. The Lieutenant-Governor may, if he think fit, appoint [4] an Embankment Committee for any district; and may from time to time may appoint appoint and accept the resignation of the members of such Committee and direct that any person shall cease to be a member thereof.

22. The Lieutenant-Governor may from time to time direct that any such Committee shall be consulted by the Collector in the discharge of any function or the performance of any duty imposed on him by this Act; and by a notification published in the Calcutta Gazette may from time to time direct[4] that any such function or duty shall be performed or discharged by such Committee.

Business of Committee.

23. The business of every such Committee shall be conducted under such rules [4] as the Lieutenant-Governor may from time to time make in that behalf.

Reference to Ccmmissioner.

24. Whenever, in any matter on which the Lieutenant-Governor has directed that the Collector shall consult the Committee, the Collector

^[1] For special power to remove trees, houses, huts or buildings, in cases of grave and imminent danger to life or property, see the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), s. 21, proviso, ante, p. 162.

^[2] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

^[3] See now the Land Acquisition Act, 1894 (1 of 1894), printed in General Acts, 1887-97, Ed. 1928, p. 216, which repeals and re-enacts Act 10 of 1870.

^[4] For a list of appointments, directions and rules made under ss. 21, 22 and 23, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 25-27.)

may differ from the Committee, he shall, if so required by the Committee, submit the question to the Commissioner of the division for decision, with copies of any remarks which may have been recorded by the Committee or any members thereof.

[1]PART III.

PROCEDURE IN CASES OF IMMINENT DANGER TO LIFE OR PROPERTY.

25. Whenever the Collector[2] shall be of opinion that the delay in Proceedings the execution of any work occasioned by proceedings commenced by a gencies. general notice under the seventh and following sections of this Act[3] would be attended with grave and imminent danger to life or property, he may forthwith cause the execution of such work to be begun in anticipation of the completion of such proceedings:

Provided that he shall without delay cause to be prepared the estimates, specifications and plans of the proposed works, together with a copy of the map as provided in section 7, and shall cause general notice to be given that the work mentioned therein has already been commenced; and thereupon such proceedings and inquiries shall be had as in and by Part II of this Act are directed.

26. Whenever it may have been determined in the final order to be Restoration passed on any such inquiry that anything done by the Collector or by the of embank-ments, etc. Engineer under the last preceding section was unnecessary, any person who shall have sustained damage by the execution of such works shall receive compensation from the Government to be assessed according to the provisions contained in Part V of this Act; and, on receipt of any application to that effect by the Collector from any such person affected, the land or the embankments or drainage shall, so far as any alteration thereof shall appear to have been unnecessary, be, at the expense of the Government, restored as nearly as possible to the state in which they were when the Collector commenced to act under the provisions of this

27. If any portion of the land likely to be affected by any work to Authority be undertaken under this Part lies within another district, the Collector to take who causes the work to be executed shall, when commencing upon it, where lands give notice of the same to the Collector of such other district; and the in different provisions of section 20 shall be applicable to all proceedings connected with the work and the cost thereof.

^[1] As to the issue of a proclamation when land has been taken or used under Pt.

III, see the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), s. 26, ante, p. 162.

[2] As to the exercise of the powers of the Collector under s. 25 by the Superintendent of Embankments or the Engineer in the Division of Orissa, see ss. 92 and

^{73,} post, pp. 483-84.

[3] In the Division of Orissa, all references in s. 25 to other parts of this Act are to be deemed to be references to the corresponding portions of the Bengal Embankment Act, 1855 (32 of 1855),—see s. 92, post, p. 483. Act 32 of 1855 is printed in Vol. I of this Code.

(Secs. 28-33.)

PART IV.

Powers of the Engineer.

Engineer subject to control of Collector. Power to Engineer to act in urgent cases.

- 28. The powers conferred on the Engineer under this Act shall be exercised subject to the general control and orders of the Collector.
- 29. In cases in which the Engineer may be of opinion that delay for the purpose of obtaining the orders of the Collector would be attended with grave and imminent danger to life or property, the Engineer may exercise the powers conferred on the Collector by section 25.

The Engineer shall forthwith report to the Collector any action taken by him under this section and shall be guided by any instructions which he may receive from the Collector in respect thereof.

Power to make repairs.

- 30. The Engineer may make any repairs in, and may do all acts necessary and proper for the maintenance of, any public embankment, public water-course or any other work executed or taken charge of under the provisions of this Act or of any previous similar Act.
- 31. Whenever any person desires that a temporary roadway should be made over, or that a temporary water-course should be made through, any public embankment, or that a temporary dam should be constructed in any embanked river or public water-course, he shall apply to the Engineer, or to any person who has been appointed in that behalf by the Engineer.

Such Engineer or person shall communicate the application with his opinion to the Collector, and shall await the Collector's order in respect thereof, unless he thinks that there is special reason for the immediate execution of the work, in which case he may execute the same without waiting for the orders of the Collector.

If the proposed work is to be executed by an officer of Government, the applicant, before the commencement of the work, shall deposit the amount estimated by the Engineer to be necessary to defray the expenses of, and incidental to, making and removing such roadway, or of, and incidental to, making, closing or removing such water-course or dam.

If the amount deposited is found afterwards to exceed the amount required, such excess shall be returned to the said applicant.

- 32. Sluices constructed in any public embankment shall be opened or shut only by or with the general or special permission of the Engineer or of the officer in the immediate charge of the embankment, under such orders, either general or special, as he may receive from the Engineer.
- 33. It shall be lawful for the Engineer, or any person whom he may authorize in that behalf, in order to carry out any of the purposes of this Act,—

to enter upon, and survey, and take levels of any land;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adapted to the purpose projected by such Engineer or by the Collector;

Power to make temporary roadway, water-course or dam.

> Sluices to be opened or shut under authority of the Engineer. Power to enter and survey land, etc.

(Secs. 34-37.)

to set out the boundaries of the land proposed to be taken, and the Power to intended line of the work proposed to be made thereon;

to mark such levels, boundaries and line, by placing marks and cutting trenches;

and, where otherwise the survey cannot be completed or the levels Power to taken, to cut down and clear away any part of any standing crop, fence clear land. or jungle:

Provided that no person shall enter into any building or upon any Previous enclosed court or garden attached to a dwelling-house (unless with the notice consent of the occupier thereof) without previously giving such occupier of entry. at least seven days' notice in writing of his intention to do so.

The Engineer or other person so authorized shall at the time of such Payment for entry tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so tendered, he shall at once refer the dispute to the decision of the Collector, and such decision shall be final.

[1]34. Whenever it is deemed requisite to repair any embankment Power to or water-course, or embanked tow-path maintained by Government, it take earth shall be lawful for the Engineer, or any person authorized in that behalf, to enter in and upon the lands mentioned in section 5, and take possession of, appropriate and remove any earth or other material therefrom, and use the same for the purposes of such repairs.

35. The Collector shall proceed in respect of any crops standing on Procedure such land as provided in section 13,[2] Bengal Act 6 of 1873; and the where crops provisions of that section shall be applicable to claims for the payment lands. of compensation for damage done to such crops.

36. When any such land is rendered permanently unfit for cultiva- Acquisition tion by any such act as aforesaid, the Local Government shall, upon of land made perapplication for that purpose made by the owner thereof, acquire such manently lands under the provisions of the Land Acquisition Act, 1870, or other cultivation. 1870. law[8] for the time being in force for the acquisition of land for public purposes.

[4]PART V.

Acquisition of Lands and Compensation.

37. Whenever, in the course of proceedings under this Act, save in Acquisition those cases in which the Collector has proceeded under the provisions of of land.

^[1] Section 34 extends to the Division of Orissa—see s. 94, post, p. 484.
[2] Printed ante, p. 161.
[3] See now the Land Acquisition Act, 1894 (1 of 1894), printed in General Acts, 1887-97, Ed. 1928, p. 216, which repeals and re-enacts Act 10 of 1870.
[4] As to the application of Part V when a proclamation has been issued under Part III, see the Bengal Embankment Act, 1875 (Ben. Act 6 of 1873), s. 26, ante,

(Secs. 38-41.)

sections 12 and 13,[1] Bengal Act 6 of 1873, it appears that land is required for any of the purposes thereof, proceedings shall be forthwith taken for the acquisition of such land in accordance with the provisions of the Land Acquisition Act, 10 of 1870, or other law[2] for the time being in force for the acquisition of lands for public purposes.

Compensation for consequential damage.

38. Subject to the provisions of section 5, whenever any land other than land required or taken by the Engineer, or any right of fishery, right of drainage, right of the use of water, or other right or property, shall have been injuriously affected by any act done or any work executed under the due exercise of the powers or provisions of this Act, the person in whom such property or right is vested may prefer a claim by petition to the Collector for compensation:

Provided that the refusal to execute any work for which application is made, and the refusal of permission to execute any work for the execution of which the permission of the Collector or any other authority is required under this Act, shall not be deemed acts on account of which a claim for compensation can be preferred under this section.

Limitation to claim for compensation.

Procedure for determining compensation.

- 39. No claim under the last preceding section shall be entertained which shall be made later than two years next after the completion of the work by which such right is injuriously affected.
- 40. When any such claim is made, proceedings shall be taken in view to determine the amount of compensation, if any, which should be made and the person to whom the same should be payable, as far as possible, in accordance with the provisions of the Land Acquisition Act, 10 of 1870, or other law[2] for the time being in force for the acquisition of land for public purposes.

Matters to be considered in determining compensation.

- 41. In any such case which is referred to the Judge and assessors for the purpose of determining whether any, and, if so, what amount of compensation should be awarded, the Judge and assessors shall take into consideration—
 - First, the market-value of the property or right injuriously affected at the time when the act was done or the work executed;

Secondly, the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right;

Thirdly, the consequent diminution of the market-value of the property or right injuriously affected when the act was done or the work executed;

Fourthly, whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation

^[1] Printed ante, p. 161.
[2] See now the Land Acquisition Act, 1894 (1 of 1894), printed in General Acts. 1887-97, Ed. 1928, p. 216, which repeals and re-enacts Act 10 of 1870.

Government.

(Secs. 42-43.)

is claimed, or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person.

But the Judge or assessors shall not take into consideration— First, the degree of urgency which has led to the act or work being not to be considered in done or executed:

Matters determining

Secondly, any damage sustained by the claimant, which, if caused compensation. by a private person, would not in any suit instituted against such person justify a decree for damages.

PART VI.

COST OF WORKS, PROCEEDINGS, ETC.

1.—Ascertainment thereof.

42. The provisions of section 47 and the following sections in this Embank-Part contained shall not apply to any of the embankments mentioned in Schedule D. Schedule D to Bengal Act 6 of 1873[1] annexed, or which may be hereafter included therein, save so far as any works or repairs are executed therein or in relation thereto under the provisions of section 18 or of section 31; or to any of such embankments as may hereafter be erected for the protection of lands which at the commencement of this Act are protected by the embankments mentioned in the aforesaid Schedule, save so far as the erection of such embankments may protect lands not protected by the embankments mentioned in the aforesaid Schedule.

All sums payable in respect of any works or repairs executed in or in relation to the embankments mentioned in the aforesaid Schedule, except under the provisions of section 18 or of section 31, shall be paid by the

43. If at any time after the commencement of this Act, on inquiry Exclusion made by the Collector as far as possible in accordance with the provisions from Scheof Part II of this Act, it shall be found that it is unnecessary for the public interests to retain any embankment mentioned in the said Schedule D, or any embankment or water-course which may have been included in the said Schedule D under the clause next following of this section, the Lieutenant-Governor may direct[2] that the same shall be no longer included in the said Schedule:

Provided that the Lieutenant-Governor may restore[2] the same to the said Schedule if on any subsequent inquiry similarly conducted it

shall appear to the Lieutenant-Governor that it is necessary so to do.

^[1] Printed ante, p. 161. [2] For a list of orders made under s. 43, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 44-47.)

Addition to Schedule D.

The Lieutenant-Governor may, at any time after the passing of this Act, by a notification published in the Calcutta Gazette, direct[1] that any embankment not mentioned in the said Schedule D or any watercourse, be included therein, and the provisions of this section shall apply to such embankment or water-course.

Contribution of public money to-wards the maintenance of the embankments in the parganas entered in Schedule E to be continued. bankments

44. In accordance with the custom heretofore in force in respect of the parganas entered in Schedule E annexed to Bengal Act 6 of 1873[2], the Government shall continue to contribute annually the sum noted therein for each pargana respectively towards the maintenance of the embankments thereof.

If such emare declared to be public. Collector to keep a separate account.

45. If the embankments maintained in either of the said pargaras shall at any time be declared to be public embankments under the provisions of section 7, the Collector shall, from the date of such declaration, keep a separate account for such parganas, in which the aforesaid sum shall be credited at the commencement of each financial year.

The unexpended balance at the close of each year shall be carried on to the credit of the account in the next succeeding year, and shall be available for the cost of repairing or erecting all the embankments which it may be deemed necessary to maintain in such pargana.

Contribution continued if it be found for the public interest to maintain the embankments.

46. If at any time * * * [3] on an inquiry made by the Collector may be dis- as far as possible in accordance with the provisions of Part II, it shall be found that it is unnecessary for the public interests to retain any unnecessary embankment in either of the said parganas, the Lieutenant-Governor may direct that such contribution shall cease in respect of such pargana:

Provided that such contribution shall again be made in accordance with the provisions hereinbefore contained, if it shall appear to the Lieutenant-Governor, on the report of an inquiry similarly conducted, that the maintenance of any embankment in such pargana has again become necessary for the public interest.

Estimates and specifications to be prepared.

47. Subject to the provisions of Part III of this Act, before the Collector or the Engineer undertakes, under the provisions of this Act, the execution of any repairs or of any work other than any new work of which the estimates, specifications and plans have been prepared and deposited in the Collector's office for public inspection as provided in section 7, specifications and estimates of the expenses to be incurred in

^[1] For a list of orders made under s. 43, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.
[2] Printed ante, p. 161.

^[3] Formal words which were repealed by the Amending Act, 1903 (1 of 1903), printed in Vol. I of this Code, are omitted,

(Secs. 48-51.)

respect of the repairs or works, including such proportion of establishment charges as the Lieutenant-Governor shall direct, shall be prepared by the Engineer.

48. Whenever it appears that the actual expenses to be incurred in Preparation respect of any work will exceed by one-tenth any estimates of such work of further estimates which may have been transmitted to the office of the Collector under the and specifinext succeeding section, the Engineer shall forthwith prepare further cations. estimates, and, if necessary, further specifications.

49. Copies of all specifications and estimates prepared under the two Estimates last preceding sections shall be transmitted to the office of the Collector, and specifications to together with vernacular translations thereof, or such abstracts thereof be open to as the Lieutenant-Governor may from time to time direct, and may be inspection. examined by any person interested in such works and repairs.

50. A general notice of the receipt of any such specifications and Notice of estimates shall be published in the manner prescribed in section 80, and estimates in such general notice shall be specified all estates chargeable for, or and specialikely to be affected by, the said works or repairs. Special notices shall cations. also be served in respect of every estate in which the area liable to the assessment of the apportioned charge is likely to exceed one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate chargeable for, or likely to be affected by, the said works and repairs. Should any objection in regard to such specifications and estimates be preferred by any such person within a period of one month from the date of service of such notice, the Collector shall pass such orders as may appear to him reasonable and proper.

51. The accounts of the actual expense incurred in executing any Preparation works or repairs, or of any portion of the actual expenses with which the of accounts Collector may determine to deal separately under this and the following Engineer's sections, shall be prepared as soon as possible after the completion certificate thereof.

of expenses.

The Engineer shall sign a certificate stating the amount of all such expenses, and specifying the boundaries of the lands which are benefited or affected by the said works or repairs, and stating generally how and to what extent the lands so specified, or any parts of them, are affected.

Any such certificate may be amended at any time before the Collector has made an order charging or apportioning the amount under section 58.

On receipt of such certificate or amended certificate, the Collector shall cause a statement to be prepared of the villages of which any lands are benefited or protected by such works and repairs, and of the estates to which they belong, and, except as otherwise in this Act provided, the zamindars of such estates and villages shall be liable to pay the said amount.

(Secs. 52-54.)

Copies of the said accounts, certificates and statements shall be deposited in the office of the Collector, and may there be examined by any person interested.

Notices and inquiry into objections.

52. General notice of the receipt and deposit of such accounts, certificates and statements in the office of the Collector shall be given.

Special notices thereof shall also be served in respect of every estate in which the area liable to assessment of the apportioned charges exceeds one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the zamindars or tenure-holders of which any sum is charged or apportioned; and if, within one month of such general notice being given, or of such special notice (if any) being served on him, any interested person shall object to the accounts on the ground either that the work charged for has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than those mentioned in the estimates, the Collector shall inquire into such objection, and pass orders thereon.

Total sum payable.

53. The Collector shall add to the amount appearing in the said certificate all sums which have been paid or have become payable in respect of the said works and repairs, whether as compensation, costs and expenses under, and incidental to, any proceedings taken or directed to be taken under Part II or Part V of this Act, or under sections 26 to 29[1] of Bengal Act 6 of 1873, as cost of making of surveys and plans, as cost of preparing the estimates, accounts, certificates and statements, as cost of the issuing and service of notices up to date, or on any other account, and shall then make an order specifying the total sum found payable, and in respect of works done under section 17 and section 31 the persons by whom, or in respect of other works, the estates in respect of which, the same is payable to him. If the order is made in respect of work done under section 17 or section 31, the same shall forthwith be served upon the party or parties liable to pay; otherwise the Collector shall proceed under the provisions in the next Chapter contained.

Interest.

Interest may be charged upon any sum paid as compensation from the date of payment thereof at five *per centum*, or at such rate, not exceeding five *per centum per annum*, as the Lieutenant-Governor may from time to time determine.

2.—Liability for the Costs, and Apportionment thereof.

Parties liable to pay.

54. The total sum aforesaid, save so far as is otherwise provided in this Act, shall be paid to the Collector by the zamindars of the estates in which are situated the lands benefited or protected by the repairs or works executed:

(Secs. 55-58.)

Provided that the sum standing to the credit of a pargana in Proviso in Schedule E to Bengal Act 6 of 1873[1] annexed in the account kept by respect of the Calleston to the Calleston to the pargana the Collector, at the time when the total amount payable is fixed under in Schedule the provisions of section 53, shall be deducted from the total amount E. payable in respect of such portion of any embankment as is situated in such pargana, and that the zamindars of the estates situated in such pargana shall be charged only with the balance of the amount (if any) which may remain payable.

55. Every zamindar, who is liable under the last preceding section Recovery for the payment of the whole or a portion of such total sum, shall be from underentitled to recover from the holder of every tenure held immediately under him, and from the holder of any land which is declared under the provisions of section 60 to form part of his estate, the sum apportioned to such tenure or land by the Collector under the provisions of section 59.

And, similarly, every tenure-holder shall be entitled to recover from the holder of any tenure subordinate to his own, and from the holder of any land declared under section 60 to form part of his tenure, the sum apportioned to such subordinate tenure or land by the Collector, under the said provisions.

56. So soon as the total sum payable as aforesaid has been ascer- Notice to tained, the Collector shall cause general notice to be given specifying be given the estates in respect of which any portion of such total sum will be apportionchargeable, and special notices to be served in respect of every estate in ment. which the area chargeable exceeds one hundred acres; or, instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served in respect of every estate and tenure on or among the zamindars or tenure-holders of which any sum is charged or apportioned.

Such notices shall make it known that an inquiry will be held at a day and place therein named for the purpose of apportioning amongst the zamindars and tenure-holders the said total sum, with interest and the costs of apportionment.

57. In any such inquiry the Collector shall take down in writing the Names of names of all persons who may claim, or who may be alleged by any party tenure-holders. interested, to be holders of tenures within any of the estates mentioned in such notice. In default of appearance of any such person, the Collector shall issue and serve a notice calling on him to appear at a date and place therein mentioned, and to show cause against being included in the order of apportionment to be made therein, and shall adjourn the inquiry till such date.

58. At such or any subsequently adjourned inquiry, the Collector, Apportionif there be only one estate liable, shall charge the zamindar thereof with amongst

zamindars.

(Secs. 59-60.)

the total amount payable; and if there be two or more estates, he shall apportion the same amongst the zamindars thereof, either—

- (a) rateably in proportion to the respective benefits derived by such estates from such works or repairs; or
- (b) in proportion to the areas of the lands benefited or protected thereby, and comprised within such estates respectively; or
- (c) with the sanction of the Local Government, in proportion to the amount of revenue payable for such estates respectively:

Provided that the said total amount payable in respect of the embankments on the right bank of the river Gandak shall be chargeable, in accordance with the custom in force for such estates, to the zamindars of all the estates situated in the district of Saran, in proportion to the amount of revenue respectively payable for such estates:

Provided also that the total amounts which may have been expended by the Government before the commencement of this Act, and the total amounts which may become payable in accordance with the provisions of this Act, on account of any year in respect of the embankments on the left bank of the river Gandak in the district of Muzaffarpur, shall be chargeable, and shall be deemed always to have been chargeable, in accordance with the custom hitherto in force in respect of such embankments; that is to say, chargeable to the zamindars of all the estates situated in the following parganas, viz., Rati, Gadasand, Hajipur, Bhatsala, Garjaol, Nae, Saresa and Balagach, in proportion to the amounts of land-revenue payable for such estates respectively, but so that the amount out of any total sum apportioned in respect of each estate in Rati, Gadasand and Hajipur, shall bear such a proportion to the land-revenue payable for such estate as shall be twice as great as the proportion which the amount apportioned in respect of each estate in the remaining parganas shall bear to the land-revenue payable for such estate.

Apportionment amongst tenure holders.

- 59. The Collector shall, in like manner, except in respect of the said embankments on the right bank and left bank of the river Gandak, charge or apportion the amount payable in respect of each estate upon or amongst the holders of the tenures therein rateably in the proportion of benefit so received or of area so benefited or protected, first deducting therefrom such sum as, on the like principle of proportion, is payable in respect of such portion of the estate as is not included within any tenure.
- 60. All lands held without payment of rent, not being estates, may, for the purposes of this Act, be deemed to form part of any estate or of any tenure within the local boundaries of which they are included; and if they are not included within the local boundaries of any estate, then to be a part of such conterminous estate as the Collector in whose district

Provisions as to lands held without payment of rent, not being estates. (Secs. 61-64.)

such conterminous estate is situated shall, by an order under his seal and signature, declare.

61. The amount charged to or apportioned on any estate or tenure Amount shall be payable in equal instalments on such days as the [Commissioner tioned payof the Division [1] shall direct [2]: Provided that no instalment shall able by exceed four annas for every acre of land in respect of which the same is payable, and that not more than four instalments shall be payable in any one year.

Interest shall be charged on the unpaid portion of the said Interest. amount from the date of apportionment until payment thereof at five per centum or at such rate, not exceeding five per centum per annum, as the Lieutenant-Governor may from time to time determine.

62. If after the apportionment of the expenses of any works and Apportionrepairs as above prescribed any expenses not included in such apportionther exment shall be found to have been paid or to have become payable on pensesaccount of the said works or repairs, whether as compensation or otherwise, the Collector may proceed to apportion such further expenses in the manner in this Part provided.

63. Instead of the procedure prescribed above for charging upon, and Alternative recovering from, zamindars, the expenses actually incurred in the repairs apportioning and maintenance of public embankments and water-courses and the estimated works connected therewith, the Lieutenant-Governor may, by an order for a series to be published in the Calcutta Gazette, direct that an estimate be made of years. of the expenses to be incurred in respect of such repairs, maintenance and works during any number of years, not exceeding thirty, which he may think fit:

and may by a subsequent order[3] fix the total sum payable during such number of years by the zamindars of the estates benefited by such repairs, maintenance and works:

Provided that no order fixing such total sum shall be passed by the Lieutenant-Governor until three months after the amount of such estimate shall have been published in the Calcutta Gazette, and by a general notice calling on all persons interested to prefer to the Collector any objections they may think proper against such amount being fixed as the total sum. Every such objection shall be submitted to the Lieutenant-Governor for his consideration.

64. The period fixed in any order under the section last preceding Period may include also years previous to the commencement of this Act:

in the last section,

^[1] The words "Commissioner of the Division" were substituted for the words what to "Lieutenant-Governor" by the Bihar and Orissa Decentralization Act, 1916 (B. & include. O. Act 3 of 1916), s. 2 and Sch. Pt. II—See Vol. III of this Code.

[2] For a list of orders made under paragraph 1 of s. 61, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[3] For a list of orders made under this paragraph of s. 63, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 65-68.)

Provided that in such case the total sum mentioned in the said section shall be calculated by adding the amounts actually expended before the making of such order to the estimate of expenses to be incurred during the rest of the period included in such orders.

Works in respect of which such estimate may be

- 65. The total sum mentioned in section 63 or in section 64 may be made recoverable in respect of the expenses of repairs and maintenance,
- and the expenses of works connected with the repairs and maintenance-(a) of any protective works which may be specified in such orders;
 - (b) of all the public embankments and water-courses in any district; or
 - (c) of all the public embankments and water-courses within any tract of country specified in the order of the Lieutenant-Governor and any such tract may contain the whole or portions of any one or more districts;

and no further sum shall be recoverable during such period in respect of the expenses of such repairs, maintenance and works connected therewith save so far as any such works or repairs are executed under the provisions of section 18 or of section 31.

But such total sum shall not include the expenses of executing any new works which may be undertaken under the provisions of this Act within any district or tract as aforesaid.

Recovery of cost of new works.

Whenever the Lieutenant-Governor shall declare that any work executed or to be executed within such district or tract is a new work within the meaning of this section, the cost of executing such work and of maintaining the same shall be payable by the zamindars to the Collector under the provisions of this Act, in addition to any total sum fixed under section 63 or section 64 as payable by them.

Mode of apportionment.

66. On publication of any order of the Lieutenant-Governor under section 63, the Collector shall proceed to charge or apportion the said total sum upon or among the zamindars and except in respect of the embankments on the right and left banks of the river Gandak as provided in section 58 among tenure-holders who are liable to pay the same, as above provided.

Payment of sum apportioned.

67. The sum so apportioned in respect of any estate or tenure or account of any such period as is mentioned in section 63 shall be payable in equal portions in each of the years included in such period, and each such portion if unpaid shall carry interest at five per centum, or at such rate, not exceeding five per centum per annum, as the Lieutenant-Governor may from time to time determine, from the end of the year in which it is payable.

Final order ment.

68. On the completion of any charge or apportionment under this of apportion- Act, the Collector shall make an order specifying the estates and tenures in respect of which any sum charged or apportioned is payable, and the

(Secs. 69-72.)

sums payable in respect of each of the instalments of such sums, and the dates on which such sums are payable.

3.—Recovery thereof.

69. As soon as may be after any final order of apportionment is Publication made, as provided in the section last preceding, the Collector shall order of cause copy of such order to be published with a general notice stating apportionthat the amounts apportioned on the zamindars in respect of estates are payable to the Collector, and the amounts apportioned on the tenureholders in respect of tenures are payable to the zamindars or superior tenure-holders. Instead of causing a general notice to be published, the Collector may cause special notices to the same effect to be served, in respect of every estate and tenure on or among the zamindars or tenureholders of which any sum is charged or apportioned.

70. If any such sum payable to the Collector, or any instalment Recovery thereof, be not, pursuant to the said order, paid, the same with interest apportioned. may be recovered as arrears of a demand under the provisions of the Public Demands Recovery Act, 1880, or any similar Act[1] for the time being in force.

Ben. Act of 1880.

> 71. When a recorded sharer of a joint revenue-paying estate has Effect of opened a separate account under Act 11 of 1859,[2] or under section 70 opening separate of Bengal Act 7 of 1876, [8] or any similar law for the time being in force account for the regulation of the opening and maintaining of such separate under Act 11 of accounts, he shall be entitled, in regard to the payment and realization 1859 or Ben. of all sums due under this Act, to all the advantages of separate liability Act 7 of animod by him and the color of 1876. enjoyed by him under the said Act 11 of 1859, [2] and Bengal Act 7 of 1876, [3] respectively, in regard to the payment and realization of revenue, and shall be entitled to separate assessment and to the issue of a separate notice in every case in which special notice is, by this Act, required to be served, from the date on which such advantages shall take effect in respect of the demand of Government revenue.

Similar privileges shall attach to every recorded holder of a revenuefree estate who has opened a separate account under section 46 of Bengal Act 9 of 1880^{4} in respect of the amount of cesses payable by him.

72. Notwithstanding anything contained in section 70, any such sum Liability of shall be a first charge on the estate in respect of which it is apportioned, sum apporand shall be deemed to be a demand debited to the estate in the public tioned. accounts of the district within the meaning of section 31 of Act 11 of

[4] The Cess Act, 1880. Printed ante, p. 369.

^[1] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), printed in Vol. III of this Code. See also s. 72.

[2] The Bengal Land-revenue Sales Act, 1859. It is printed in Vol. I of this Code.

[3] The Land Registration Act, 1876. Printed ante, p. 237.

(Secs. 73-75.)

1859, [1] and such charge shall not be avoided by any sale, nor shall the joint liability of the entire estate for such sum be affected by any partition of the said estate which may subsequently take place.

Amount apportioned may be raised by leasing or mortgaging estate.

- 73. If the Collector thinks it inexpedient to proceed for the recovery of such sum or any part thereof under the provisions of section 70, or having so proceeded shall have failed to realize the sum due, he may, with the sanction of the [Commissioner of the Division],[2] raise the amount necessary to discharge the sum or instalment remaining unpaid---
 - (a) by mortgaging the whole or any part of such estate;
 - (b) by letting in farm or managing by himself or another the whole or any part of such estate;
 - (c) partly by one of such modes and partly by another or others of them.

For the purposes of this section the Collector may exercise all the powers of the owner of such estate, and his signature shall be a good and sufficient signature to any document necessary to carry into effect the said purposes.

Recovery by zamindars and tenureholders.

74. Every zamindar or tenure-holder to whom any sum or instalment thereof is payable under an order made in pursuance of section 68 may recover the same with interest as aforesaid in the manner provided for the recovery of arrears of rent in respect of patni tenures by the provisions of clauses 2 and 3 of section 8, sections 9, 10, 14, 15, and clauses 1, 2 and 3 of section 17 of Regulation 8 of 1819,[3] as amended by Bengal Act 8 of 1865,[4] or by the provisions of any similar Act for the time being in force:

Provided that the right or interest of any person holding from the defaulter shall not be affected by any sale held under these provisions.

PART VII.

PENALTIES.

Penalty for obstructing persons in exercise of powers conferred by Act.

75. Whoever wilfully obstructs any person duly authorized under this Act in removing or levelling any embankment, house, hut or other building, or in the lawful exercise of any of the powers in this Act conferred, shall, in case such obstruction shall not amount to an offence within the provisions of the Indian Penal Code, be liable to imprison- 45 of 1860. ment of either description for any period not exceeding six months, at

^[1] The Bengal Land-revenue Sales Act, 1859, in Vol. I of this Code.
[2] The words "Commissioner of the Division" were substituted for the words "Board of Revenue" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2, Sch. Pt. II, printed in Vol. III of this Code.
[3] The Bengal Patni Taluks Regulation, 1819, in Vol. I of this Code.

^[4] The Bengal Rent Recovery (Under-tenures) Act, 1865, ante, p. 45.

(Secs. 76-78.)

the discretion of the Magistrate, or to fine not exceeding two hundred rupees.

[1]76. (a) Every person who, in any of the territories to which this Penalty for Act extends, without the previous permission of the Collector, shall erect, unauthorized or cause or wilfully permit to be erected, any new embankment, or shall with emadd to any existing embankment, or shall obstruct or divert, or cause or bankments wilfully permit to be obstructed or diverted, any water-course, if such or drainage. act is likely to interfere with, counteract or impede any public embankment or any public water-course;

(b) every person who, within the limits of the tract included in any Penalty for prohibitory notification under section 6, without the previous permission unauthorised of the Collector, shall erect, or cause or wilfully permit to be erected, interference with emany new embankment, or shall add to any existing embankment, or shall bankments obstruct or divert, or cause or wilfully permit to be obstructed or or drainage in prohibited diverted, any water-course; and

(c) every person who shall abet any such act as is mentioned in Penalty for clauses (a) and (b),

abetment of such acts.

shall be liable, on conviction, to a fine not exceeding five hundred rupees, or in default of payment to imprisonment of either description for a period not exceeding six months.

77. No person shall, without due authority, cut through, or attempt Penalties to cut through, any public embankment, or destroy, or attempt to destroy, for injuring any such embankment, or open or shut, or obstruct any sluice in any ments, etc. such embankment, or any public water-course; and every person who shall commit any breach of the provisions of this section shall, in case the act shall not amount to mischief within the meaning of the Indian Penal Code, [2] be liable to imprisonment of either description for a term not exceeding one month, or to a fine not exceeding two hundred rupees.

78. Every person who shall make any dam or other obstruction for Penalties the purpose of diverting or opposing the current of a river or water-diverting course wherein or whereon there are public embankments, without the rivers or permission of the officer in immediate charge of the embankments,

cattle to

or shall refuse or neglect to remove any such dam or obstruction so graze on made by him when required to remove it by the Engineer, or without the embank-ments, etc. permission of the Engineer previously obtained shall cut or otherwise alter the banks of any embanked river or water-course, or remove the earth from any public embankment, or drive stakes into it, or by any other wilful act destroy or diminish the efficiency of such embankment;

and every person who without such permission shall cause or knowingly and wilfully permit any cattle to graze upon any such embankment

[2] See Act 45 of 1860, s. 425.

15 of 1860.

^[1] Section 76 extends to the Division of Orissa, the words "Superintendent of Embankments" being substituted for the word "Collector" in clauses (a) and (b) see s. 94, post, p. 484.

(Secs. 79-81.)

or tether or cause or wifully permit any cattle to be tethered upon any such embankment, or root up any grass or other vegetation growing on any such embankment,

shall be liable to imprisonment of either description for a term not exceeding six months, or to a fine not exceeding two hundred rupees.

Obstructions to be removed and damage repaired. 79. Whenever any person is convicted of an offence under either of the three last preceding sections, the convicting Magistrate may order that he shall remove the embankment or obstruction, or repair the damage, in respect of which the conviction is held, within a period to be fixed in such order.

If such person neglects or refuses to obey such order within the fixed period, the Engineer may remove such embankment or obstruction or repair such damage, and the cost of such removal or repair shall be levied from such person in addition to any other penalty in the manner provided in section 307 of the Code of Criminal Procedure. [1]

10 of 1872.

PART VIII.

MISCELLANEOUS.

Mode of publishing proclamation and issuing notices.

80. Every proclamation and general notice by this Act required to be issued or given shall be published by affixing a copy of the same in the office of every Collector, Subdivisional Officer and Munsif within whose jurisdiction, and at every police-station within the limits of which any lands affected by such proclamation or notice are known by the Collector to be situated; and by affixing copies of the same in conspicuous positions in such hats, bazars, towns, villages or other public places as the Collector may direct; and also by giving notice by beat of drum at such public places that such copies have been affixed and that one copy of the papers containing the information which is the subject of such proclamation or general notice is open to inspection by all concerned at the office of the Collector.

Service of special notices.

- 81. Every special notice or order by this Act required to be served shall be served,—
 - (1) by delivering a copy of the same to the person to whom it is directed, or, on failure of such service, by posting a copy on some conspicuous part of the house in which the said person resides, or by delivering a copy to any agent authorized to appear generally for the person to whom such notice or order is directed; or

^[7] Act 10 of 1872 was repealed and re-enacted by Act 10 of 1882, which again has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to ss. 386 and 389 of the latter—see s. 3 (1) thereof.

(Secs. 82-85.)

- (2) by sending a registered letter containing a copy of such notice or order directed to the said person at his usual place of abode, or at the place where he may be known to reside; or
- (3) by posting a copy of the notice or order at the mal-cutcherry of the estate, village or tenure to which the same relates; or, if no such mal-cutcherry be found, on some conspicuous place on the said estate, village or tenure; or
- (4) if the person on whom the notice or order is to be served is a zamindar, by delivering a copy thereof to the agent who shall have paid an instalment of revenue next before or who may pay the instalment next after the preparation of such notice or order, on behalf of such zamindar.

In all cases where two or more persons are holders of an estate or tenure, service under the last two clauses shall be deemed to be good and sufficient service on each and all of such persons.

82. In any inquiry or appeal held under this Act the Collector and Powers of the Commissioner shall respectively have the same powers as those conferred on Courts by the Code of Civil Procedure[1] of summoning and Commisexamining witnesses and compelling the production of documents.

sioner on inquiry and appeal.

83. No proceedings under this Act shall be impeached or affected by No proceedreason of any mistake in the name of any person thereby rendered liable ings to be to pay any sum of money, or in the description of any estate or tenure for mistake or land in respect of which he is rendered liable to pay, provided the or want of directions of this Act be in substance and effect complied with; and no form. proceedings under this Act shall for want of form be quashed or set aside in any Court of Justice.

84. Every order passed by the Collector in respect of applications Appeal under section 18, and every order passed under sections 11, 50, 52 or 68, from shall be appealable to the Commissioner of the Division, and every such order of the Commissioner, except when otherwise directed by this Act, shall be appealable to the Board of Revenue; [2] but no appeal shall lie under this section against any order unless the same be presented within one month from the date of the order-

85. All the powers of a Collector under this Act shall be exercised General under the general control and orders of the Commissioner of the Division, control of and all the powers of Collectors and Commissioners shall be exercised Commissubject to the general control and orders of the Board of Revenue[2] sioner and and of the Government and of the Government.

ment.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908) and this reference should now be taken to be made to the latter Code-see s. 158 thereof.

^[2] As to the present constitution and powers of the Board of Revenue, see now the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), in Vol. III of this Code.

(Secs. 86-90.)

Every order passed by any of the said authorities shall be subject at any time to be varied or set aside by the controlling authority.

Orders to be final.

86. Subject to the provisions of the two sections last preceding, every order passed by the Collector in respect of applications under section 18 and every order passed under sections 11, 50, 52 or 68, and every order passed by a controlling authority in respect of such order of a Collector, shall be final, and not liable to be modified or altered otherwise than as expressly provided in this Act.

Disposal of lands no longer required for embankments. 87. Whenever the maintenance of any public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient, such land shall be restored by the Collector to the estate or tenure from which such land was originally taken on repayment of the compensation, if any, which was paid for such land when the same was taken for the purpose of the embankment.

If persons who are entitled to the restoration of any land under this section, or any of them, refuse or neglect to pay such price within a reasonable time after demand, the same shall be sold by the Collector as a revenue-free holding for such price as he can obtain for the same.

All sums obtained for lands conveyed under the provisions of this section shall, after the payment of all expenses incurred on account of the same, be applied to the payment of the cost of any new embankment or drainage-works, or of the expenses of maintaining any embankment or drainage-works affecting the said lands and other adjacent lands, in reduction of the amount chargeable upon the zamindars and tenure-holders of the lands benefited, as hereinbefore provided, if any amount be so chargeable.

Collector
may delegate
any of his
powers to a
Deputy
Collector.

88. A Collector may delegate any of his powers under this Act to a Deputy Collector; but from any order passed by a Deputy Collector to whom powers have been so delegated an appeal shall lie to the Collector if presented within thirty days of the date of the order.

Every such delegation of power shall be reported to the Commissioner of the Division.

Jurisdiction.

89. All offences created by this Act shall be inquired into and tried by a Magistrate of the first or second class.

Power to make, alter and cancel rules.

- 90. The Lieutenant-Governor may from time to time make rules,[1] consistent with the provisions of this Act, to regulate the following matters:—
 - (a) the proceedings of any officer who, under any provisions of this Act, is required or empowered to take action in any matter;

^[1] For rules made under s. 90, see the Bihar and Orissa Local Statutory Rules and Orders. Vol. I, Pt. VI.

Ben. Act 6

Ben. Act 3

of 1880.

of 1876.

(Secs. 91-92.)

- (b) the business of Embankment Committees:
- (c) the cases in which, the officers to whom and the conditions subject to which orders and decisions given under any provision of this Act, and not expressly provided for as regards appeal, shall be appealable;
- (d) the person by whom, the time, place or manner at or in which anything for the doing of which provision is made in this Act, shall be done;
- (e) the amount of any charge made under this Act; and

(f) generally to carry out the provisions of this Act.

The Lieutenant-Governor may from time to time alter or cancel any rules so made.

Such rules, alterations and cancelment shall be published in the Publication Calcutta Gazette, and shall thereupon have the force of law:

Provided that no rules shall be made by the Lieutenant-Governor under the powers conferred on him by this section until a draft of the same shall have been published in the Calcutta Gazette for one month, after which time the Lieutenant-Governor may pass such rules as originally published, or with such alterations, additions and omissions as he may think fit.

91. Nothing in this Act shall apply to any embankment, land or Saving of water-course which is under the operation of any of the following Acts:—of certain

the Bengal Drainage Act, 1880,[1] the Bengal Irrigation Act, 1876. [2]

Bengal Act 5 of 1864[8] (an Act to amend and consolidate the law relating to the collection of Tolls on Canals and other lines of navigation, and for the construction and improvement of lines of navigation, within the provinces under the control of the Lieutenant-Governor of Bengal.)

PART IX.

SPECIAL PROVISIONS FOR THE PROVINCE OF ORISSA.

[4]92. The powers conferred on the Collector by section 25 may, in Powers the Province of Orissa, be exercised by the Superintendent of Embank- conferred on Superinments with the consent of the Collector previously obtained, and the tendent of references in the said section to other parts of this Act shall be deemed Embank-ments in to be references to the corresponding portions respectively of Act 32 of Orissa. 1855^[5] (an Act relating to Embankments).

^{1]} Printed ante, p. 335.
2] Printed ante, p. 205.
3] The Canals Act, 1864, ante, p. 17.
4] The ss. 92 and 93 apply to Orissa—see the Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code.

^[5] The Bengal Embankment Act, 1855. It is printed in Vol. I of this Code.

(Secs. 93-94. Schedules I-II.)

The consequences mentioned in section 26 shall attach to everything done by the Superintendent of Embankments under the provisions of this section.

Power to Engineer to act in urgent cases.

[1]93. In cases in which the Engineer in charge of any embankment may be of opinion that delay for the purpose of obtaining the orders of the Superintendent of Embankments and the Collector would be attended with grave and imminent danger to life or property, the Engineer may exercise the powers conferred on the said Superintendent with the consent of the Collector in pursuance of the last preceding section.

The Engineer shall forthwith report to the said Superintendent any action taken by him under this section, and shall be guided by any instructions which he may receive from him in respect thereof.

Sections made applicable to Orissa.

94. Sections 4, 5, 6, 34 and 76 shall extend to the Province of Orissa, the words "Superintendent of Embankments" being substituted for the word "Collector" in clauses (a) and (b) of section 76.

SCHEDULE I.

(Referred to in section 2.)

(Portions of Bengal Act 6 of 1873 which are not repealed.)

SCHEDULE II.

(Referred to in section 2.)

Section of Bengal Act 6 of 1873 in which the reference is made.		ae	The reference as it stands.	To what portion of the present Act the reference is to be read to apply.
Section 12	• •		To "the last preceding section."	Section 25.
Section 12			To section 18	Section 30.
Section 12			To section 25	Section 37,
Section 21			To " such proceedings "	Section 19.
Section 26		• •	To Part III	Part III,
Section 26	••	••	To " this Part "	Part V,

^[1] The sections 92 and 93 apply to Orissa—see the Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code.

(Schedule III.)

SCHEDULE III.

(Referred to in section 8.)

Notice is hereby given, as required by section 8, Bengal Act 2 of 1882, to all persons interested, that it appears to the Collector that the following work should be done; that is to say [here state the nature of the work and the purpose for which it is to be undertaken]. *For the execution of this work the undermentioned land will be required to be taken up:—

1	2	3
Pargana in which land is situated.	Villages in which land is situated,	Area of land,

Estimates of the proposed work, with the necessary specifications and plans, together with a copy of the survey map showing the lands likely to be affected by the said work, are open for inspection at this office by any interested person who is allowed to take copies thereof.

†The total probable cost of such work will be the sum of Rs. and the rate per acre of the area benefited or protected by the said work is estimated at Rs.

The following estates and villages will probably be affected by the work proposed (here set out a list of the estates and villages).

Any person interested and wishing to show cause against the execution of the works specified is hereby required to appear before the Collector for that purpose on the day of .

The day of

K. B., Collector of

work from the zamindars and tenure-holders.

^{*}The words in italics and the tabular form to be omitted if no land is to be acquired.

+ These words may be omitted, unless it is proposed to recover the cost of the

BENGAL ACT 3 OF 1885.

(THE BENGAL TRAMWAYS ACT, 1883.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Short title.
 - (Commencement.) Repealed.
- 2. Interpretation.

PART I.

ORDERS BY THE LOCAL GOVERNMENT AUTHORIZING THE CONSTRUCTION OF TRAMWAYS.

- 3. By whom orders authorizing the construction of tramways may be obtained. When applications for authority to construct tramways may be made.
- 4. Documents to be forwarded with application.
- Local Government to determine on application and objection.
 Local Government may make and publish order.
 Form and contents of order.
- 6. Power to revoke, amend or vary order.
- 7. Power to authorize joint work.
- 8. Local Government may in certain cases dispense with consent of local authority.
- 9. Promoters' powers to cease at expiration of prescribed time.
- 10. Payment of expenses when local authority are promoters.
- 11. Rent for use of road when local authority are not promoters.
- 12. Application of rent or tolls.13. Power to make rules.

PART II.

CONSTRUCTION OF TRAMWAYS.

- 14. Form in which tramways are to be constructed and maintained.
- 15. Power to break up streets.
- 16. Promoters to keep the tramway roads in proper repair.
- 17. Promoters not to obstruct ordinary traffic.
- 18. Reservation of right of public to use roads.
- 19. Right of user only.

PART III.

WORKING OF TRAMWAYS.

- 20. No tramway to be opened without certificate from Engineer.
- 21. Local authority may lease or take tolls.
- 22. Carriages how to be worked.
- 23. Promoters may use tramway carriage with flange wheels.
- 24. Promoters may fix and demand fares.
- 25. Printed list of fares, etc., to be placed in carriages.
- Fares how to be paid. 26. By-laws by local authority.
- 27. The promoters may make certain by-laws.
- 28. Publication of by-laws.

PART IV.

OFFENCES.

SECTION.

- 29. Penalty for failure of promoters to comply with provisions of this Act. 30. Penalty for obstructing promoters in the exercise of their power. 31. Penalty for interfering with tramway. 32. Penalty for avoiding payment of proper fare. 33. Servant of promoters may arrest persons avoiding payment of fare. 34. Carriage of dangerous or offensive goods. 35. Penalty for breach of by-laws.

PART V.

MISCELLANEOUS.

36. Promoters to be responsible for all damages.

37. Power for the local authority or police to regulate traffic on roads.

38. Reservation of power over roads.

Discontinuance of Tramways.

39. Tramways to be removed in certain cases.

Inability of promoters.

40. Proceedings in case of inability of promoters.

Purchase of Tramways.

41. Local authority to have right of purchasing tramways after twenty-one years.

BENGAL ACT 3 OF 1883.

(THE BENGAL TRAMWAYS ACT, 1883.)[1]

(2nd May, 1883.)

An Act to authorize the making and to regulate the working of Tramways in Bengal.

Whereas it is expedient to facilitate the construction and to regulate Preamble the working of tramways within the territories subject to the Government of the Lieutenant-Governor of Bengal[2]; It is enacted as follows:—

1. This Act may be cited for all purposes as the Bengal Tramways Short title. Act. 1883.

(Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).

2. For the purposes of this Act the terms hereinafter mentioned shall, Interpretaunless there be something repugnant in the subject or context, have the meanings hereinafter assigned to them: -

the term "local authority" shall mean-

" Local authority."

- (1) bodies of persons for the time being appointed or elected to conduct the affairs of any municipality under Bengal Act 5 of 1876 or other[3] law for the time being in force for the purpose of regulating municipalities in Bengal;
- (2) any Board, Committee, Department or other body or person in whom a road as defined by this Act is vested, or who have the power to maintain or repair such road;

the term "area" in relation to a local authority shall mean the "Area." area within the jurisdiction of such local authority;

Local Extent.—This Act was passed for the whole of the former Province of Bengal—see the preamble.

The application of the Act is barred in—
the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),
in Vol. I of this Code; and
the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, ibid.

SIMIAR ACTS.—The Indian Tramways Act, 1886 (11 of 1886—printed in General Acts, 1873-86, Ed. 1928, p. 502), which runs on lines similar to those of the present Act, does not extend to Bihar and Orissa. The Governor in Council is, however, empowered by s. 2(2) of the Act to extend it to Bihar and Orissa or any part thereof.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[3] Ben. Act 5 of 1876 has been repealed and a country of the sambalpur.

[3] Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), which again has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), in Vol. III of this Code.

^[1] Legislative Papers.—For Statement of Objects and Reasons, see Calcutta Gazette, 1883, Pt. IV, p. 46; for Report of Select Committee, see *ibid*, p. 61; and for Proceedings in Council, see *ibid*, Supplement, pp. 42, 47, 229 and 528.

Local Extent.—This Act was passed for the whole of the former Province of

(Sec. 3.)

"Municipality."

the term "municipality" shall mean any place in which Bengal Act 5 of 1876 or any other law [1] for the time being in respect of Bengal municipalities is in force;

" Road."

the term "road" shall mean any carriage way, being a public thoroughfare, and the carriage way of any bridge forming part of or leading to the same;

"Tramway." the term "tramway" shall mean a tramway constructed under this Act.

PART I.

ORDER BY THE LOCAL GOVERNMENT AUTHORIZING THE CONSTRUCTION OF TRAMWAYS.

By whom orders authorizing the construction of tramways may be obtained.

3. An order made by the Local Government authorizing the construction of any tramways in any municipality or area may be obtained by—

1st, the local authority of such municipality or area;

2nd, any person, persons, corporation or company with the consent of such local authority.

And any such local authority, person, persons, corporation or company shall be deemed to be "promoters" of a tramway, and are in this Act referred to as "the promoters".

When applications for authority to construct tramways may be made.

Where the local authority consists of a body of persons, Board or Committee, no application shall be made to the Local Government for the purpose of authorizing the construction of tramways in a municipality or area until a resolution, approving of the intention to make such application, shall be passed at a special meeting of the members constituting the local authority in such municipality or area.

Such special meeting shall not be held unless a month's previous notice of the same and of the purpose thereof has been given in the manner in which notices of meetings of such local authority are usually given, and such notice shall require that all objections to the proposed tramways shall be submitted for the consideration of the local authority before the date fixed for the special meeting.

Such resolution shall not be passed unless two-thirds of the members constituting such local authority are present and vote at such special meeting and a majority of those present and voting concur in the resolution.

^[1] Ben. Act 5 of 1876 has been repealed and re-enacted by the Bengal Municipal Act, 1884 (Ben. Act 3 of 1884), which again has been repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922) in Vol. III of this Code.

(Secs. 4-6.)

4. At the time of making an application for such order the promoters shall also forward to the Local Government-

Documents to be forwarded with application.

- 1st, a memorial signed by the promoters descriptive of the undertaking;
- 2nd, a copy of the proceedings and resolution of the special meeting held under the provisions of section 3;
- 3rd, a copy of the provisional agreement made between the promoters and local authority, where the promoters are not themselves the local authority;
- 4th, an estimate of the proposed works, signed by the persons making the same;
- 5th, all necessary maps, plans, sections and drawings of the proposed work.
- 5. The Local Government shall consider the application, and may, if Local it think fit, direct an inquiry as to the propriety of proceeding upon such to deterapplication, and it shall consider any objection thereto that may be filed mine on on or before such day as it may from time to time appoint.

Government application and objection. Government

Where it appears to the Local Government expedient and proper that Local the application should be granted, with or without addition or modifica- the may make tion, or subject or not to any restriction or condition, the Local Govern- and publish ment may settle and make an order[1] accordingly, and such order shall be published in the Calcutta Gazette.

Every such order shall empower the promoters therein specified to Form and make the tramway upon the gauge and in manner therein described, and contents of shall contain such provisions, fix such maximum rates of fare and prescribe such penalties for default as (subject to the provisions of this Act) the Local Government, according to the nature of the application and the facts and circumstances of each case, thinks fit.

Where the promoters are not the local authority, the order shall set forth the agreement made between the promoters and the local authority, and one of the provisions of such agreement shall settle the manner in which the value of the tramway shall be calculated in the event of its purchase by the local authority, under sections 39, 40 or 41.

6. The Local Government, on the application of any promoters power to empowered by an order to construct a tramway, may from time to time revoke, revoke, amend or vary such order by a further order[2]:

vary order.

Provided that, whenever the promoters are not the local authority, the Local Government shall, before passing such order, call upon the local authority to state any objection it may have to such application.

^[1] For a list of orders made under s. 5, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.
[2] For a list of orders made under s. 6, see ibid.

(Secs. 7-11.)

Power to authorize joint work. 7. Subject to, and in accordance with, the provisions of this Act, the Local Government may, on a joint application, or on two or more separate applications, settle and make an order empowering two or more local authorities, respectively, jointly to construct the whole, or separately to construct parts of a tramway, and jointly or separately to own the whole or parts thereof; and all the provisions of this Act which relate to the construction of tramways shall extend and apply to the construction of the whole and the separate parts of such tramway as last aforesaid; and the form of the order may be adapted according to the circumstances of the case.

Local Government may in certain cases dispense with consent or local authority. Promoters' powers to cease at expiration of prescribed time.

- 8. Where it is proposed to lay down a tramway in two or more areas, and any local authority having jurisdiction in any of such areas does not consent thereto, the Local Government may nevertheless make an order authorizing the construction of such tramway, if it is satisfied after inquiry that two-thirds of the length of such tramway is proposed to be laid in an area or areas the local authority of which area or areas does consent thereto.
- 9. If the promoters empowered by any order under this Act to make a tramway do not, within the period prescribed in such order, complete the tramway and open it for public traffic; or,

if the works are not substantially commenced within the latest date prescribed in such order for their commencement; or,

if the works having been commenced, are suspended without a reason sufficient, in the opinion of the Local Government, to warrant such suspension;

the powers given by the order to the promoters for constructing such tramway, executing such works, or otherwise in relation thereto, shall cease to be exercised to the extent and in the manner specified in such order.

A notice inserted by the Local Government in the Calcutta Gazette to the effect that a tramway has not been completed and opened for public traffic, or that the works have not been substantially commenced, or that they have been suspended without sufficient reason, shall be conclusive evidence for the purposes of this section of such non-completion, non-commencement or suspension.

- 10. When the local authority of any area are the promoters of any tramway, the expenses incurred by them in constructing and working such tramway under the provisions of this Act, including the expenses preparatory thereto, may be paid out of the funds under the control of such local authority.
- 11. When the local authority are not the promoters, they may fix and demand from the promoters such rent for the use of roads as may be agreed upon.

Penalty of expenses when local authority are promoters.

Rent for use of road when local authority are not promoters.

(Secs. 12-15.)

12. Any moneys received by any local authority by way of rent or Application tolls in respect of any tramway constructed and worked under the pro- or rent or tolls. visions of this Act may be applied by them to the purposes for which other funds under the control of such local authority may be applied.

13. The Local Government may from time to time make, and when Power to made may revise, modify, annul, add to or confirm, any rules it may be expedient to make for the purpose of carrying this Act into execution.

PART II.

CONSTRUCTION OF TRAMWAYS.

14. Every tramway shall be constructed and maintained on such Form in which gauge and in such manner as may be specified in the order of the Local tramways Government empowering the construction of such tramway, and, before constructed the work of construction is begun, the maps, drawings and specification and mainshowing the proposed construction of such tramway shall be submitted to the local authority and be approved by it, and the cars and carriages intended to run on the tramways shall also be of such construction and furnished with such brakes and other appliances as shall have been approved by such local authority.

15. The promoters may from time to time, for the purpose of Power to constructing and maintaining any tramways under this Act, open and streets. break up the soil and pavement of any of the roads upon which the construction and maintenance of such tramway has been authorized by the order of the Local Government in that behalf, and therein lay sleepers and rails, and repair, renew, alter or remove the same; and may, for the purposes aforesaid, do in and on such roads all other acts which shall from time to time be necessary for constructing and maintaining their tramways:

Provided that, when the powers granted under this section shall be exercised by the promoters who are not the local authority, such powers shall be exercised subject to the following regulations:-

- 1st.—They shall give to the local authority notice in writing of their intention to open or break up any such road, specifying the time at which they will begin to do so, and the portion of the road proposed to be opened or broken up. notice to be given at least seven days before the commencement of the work.
- 2nd.—They shall not open or break up or alter the level of any such road, except under the superintendence and to the

(Sec. 16.)

- reasonable satisfaction of the local authority, for which superintendence the promoters shall pay all reasonable expenses, unless the local authority neglect to give such superintendence at the time specified in the notice, or discontinue the same during the work.
- 3rd.—They shall not, without the consent of the local authority in writing, open or break up at any one time a greater length than a quarter of a mile in any one length, and shall leave an interval of at least a quarter of a mile between any two such places at which they may open or break up such road.
- 4th.—They shall, with all convenient speed, and in all cases within two calendar months at the most, unless the local authority otherwise consent in writing, complete the work for which the said road shall be broken up, and fill in the ground, and make good the surface, and, to the reasonable satisfaction of the local authority, restore the road to as good a condition as that in which it was before it was opened or broken up and clear away all surplus materials or rubbish occasioned thereby.
- 5th.—They shall in the meantime, when such road is opened or broken up, cause it to be fenced and watched, and to be properly lighted at night.
- 61h.—They shall make good all damage done to the gas and waterpipes, sewers, drains, culverts, bridges and fences, whether belonging to the local authority or to private individuals, by the disturbance thereof, and shall not cause any interruption in the supply of gas in or through any main or pipe, or the flow of water through any pipe, drain, culvert, bridge or other waterway; if they fail to make such damage good, or to remove such interruption within reasonable time, the local authority may, without prejudice to the penalties payable under section 29, cause the same to be made good at the promoters' expense.

16. The promoters shall at their own expense at all times maintain and keep in good condition and repair, in such manner as the local authority shall direct, the rails of which any of their tramways shall for the time being consist, and so much of any road as lies between the rails of any tramways; and, in the case of double lines or turnouts or sidings, the portion of the road between the tramways, and in every case so much of roads as extends eighteen inches beyond the rails of and on each side of any such tramways; and in the course of carrying out repairs it shall

not be necessary to give notice thereof to the local authority.

Promoters to keep the tramway roads in proper repair.

(Secs. 17-22.)

- 17. In exercising the powers given to them by the last two preceding Promoters sections the promoters shall arrange their work so as to afford the least not to obspossible obstruction to the ordinary traffic of the roads or to the ordinary traffic means of approach to houses situated on either side of the roads, and so as to admit of as free and unrestricted entry at all times into the sewers. drains, culverts and bridges for the time being in use as is possible under the circumstances and also so as to enable proper repairs to be made to water or gas-pipes by the direction of the local authority.
- 18. Nothing in this Act, or in any by-law made under this Act, shall Reservation take away or abridge the right of the public to pass along or across every public to or any part of any road along or across which any tramway is laid, use roads, whether on or off the tramway, with carriages not having flange wheels or wheels suitable to run on rails. But the right of the public shall not include the use of any new roadway, embankment or earthwork constructed or acquired for the special and exclusive use of the tramway.
- 19. Notwithstanding anything in this Act contained the promoters Right of shall not acquire, or be deemed to acquire, any right other than that user only. of user of any road along or across which they lay any tramway.

PART III.

WORKING OF TRAMWAYS.

- 20. No tramway shall be opened for public traffic until the same No tramway has been inspected and certified by an Engineer or other officer, to be opened appointed in that behalf by the Local Government, to be fit for such tificate from traffic.

 Engineer.
- 21. When a tramway has been completed under the provisions of this Local autho-Act and certified to be fit to be opened for public traffic under the last rity may preceding section, the local authority or other promoters may, subject to take tolls. the provisions of this Act, place and run carriages on such tramway, and demand and take tolls and charges in respect of the use of such carriages; or may, by lease to be approved of by the Local Government, demise to any person, persons, corporation or company the right of user by such person, persons, corporation or company of the tramway, and of demanding and taking in respect of the same the tolls and charges authorized; or such authority may leave such tramway open to the public, and may in respect of such user demand and take the tolls and charges authorized.
- 22. The cars and carriages of the promoters on the lines of the Carriages tramway shall be worked with such power, animal, mechanical or other-how to be wise, as may be specified in the order issued by the Local Government under section 5.

(Secs. 23-28.)

Promoters may use tramway carriages with flange wheels.

23. The promoters may use on their tramways carriages with flange wheels or wheels suitable for running on the prescribed form of rail, and, subject to the provisions of this Act, they shall have the exclusive use of their tramways for carriages with flange wheels, or other wheels, suitable for the said form of rail.

Promoters may fix fares.

24. The promoters shall have power from time to time to fix the rates and demand of fares for carrying passengers and goods in the said cars or carriages, and may demand and take the same for every passenger travelling upon any of their tramways, or for the carriage of goods by their tramways:

> Provided that the rate of fare for each person or parcel shall not exceed the maximum rates authorized in the order of the Local Government issued under section 5.

Printed list of fares, etc., to be placed in carriages.

25. A printed list, in English and the vernacular of the district, of all the fares and charges fixed under the authority of the last preceding section, and a printed copy in the same languages of all by-laws in force as hereinafter mentioned, shall be exhibited in a conspicuous place inside each of the cars or carriages used by the promoters upon any of their tramways.

Fares how to be paid.

The fares and charges fixed as aforesaid shall be paid to such persons at such places, upon or near to the tramways, and in such manner and under such regulations as the promoters may, by notice to be annexed to the list of fares, from time to time appoint.

By-laws by local authority.

26. The members constituting the local authority in a municipality or area in special general meeting may, subject to confirmation thereof by the Local Government, from time to time make such by-laws[1] as to the rate of speed, number of passengers and mode of use of the tramways as the convenience and safety of the public may require, and as are not inconsistent with this Act or any rules framed under section 13.

The promoters may make certain by-laws.

27. The promoters may, subject to confirmation as aforesaid, from time to time make such by-laws[1]—

for preventing disturbances, or the entry of persons suffering from infectious diseases, or the commission of any nuisance in or upon any carriage, or in or against any premises, belonging to them; and

for regulating the travelling in or upon any carriage belonging to them:

Provided that such by-laws are not inconsistent with this Act or with any rules or by-laws framed under sections 13 and 26.

Publication of by-laws.

28. All rules and by-laws made under sections 13, 26 and 27, and confirmed by the Local Government, shall, when so confirmed be

^[1] For by-laws made under ss. 26 and 27, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 29-32.)

published in the Calcutta Gazette, and such rules and by-laws when so published shall, until repealed or altered, be of the same effect as if they had been inserted in this Act:

Provided that no rules and by-laws shall be confirmed by the Local Government until they shall have been published for at least one month previously in the *Calcutta Gazette* and in one or more of the local newspapers (if any exist) which circulate in the district to which such rules and by-laws relate.

PART IV.

OFFENCES.

- 29. If the promoters, not being the local authority, fail in any Penalty for respect to comply with the provisions of sections 14, 15, 16, 17, 20 and 22 failure of promoters of this Act, they shall for every such offence (without prejudice to the to comply enforcement of specific performance of the requirements of this Act, or with provisions to any other remedy against them), upon complaint of any person of this Act. injuriously affected thereby, be liable to a penalty not exceeding two hundred rupees and to a further penalty not exceeding fifty rupees for each day during which any such failure continues after the first day on which such penalty is incurred.
- **30.** If any person wilfully obstructs any person acting under the Penalty for authority of the promoters in the lawful exercise of their powers in obstructing promoters is setting out or making, laying down, repairing or renewing a tramway, the exercise or injures or destroys any mark made for the purpose of setting out the of their lines of the tramways, he shall, for every offence, be liable to a penalty not exceeding fifty rupees, and shall also be liable to pay such damages as may be awarded in respect of such injury by any competent Court.
- 31. If any person without lawful excuse (the proof whereof shall lie Penalty for on him) wilfully does any of the following things, namely:—

 interfering with tram-

interferes with, removes or alters any part of a tramway of the way. promoters, or of the works connected therewith;

does or causes to be done anything in such a manner as to obstruct any carriage using the tramways;

or knowingly aids or assists in the doing of such thing,

he shall for every such offence be liable (in addition to any proceedings by way of criminal charge or otherwise to which he may be subject) to a penalty not exceeding one hundred rupees.

32. If any person travelling or having travelled in any carriage of Penalty for the promoters avoids or attempts to avoid payment of his fare, or if any payment of person having paid his fare for a certain distance knowingly and wilfully proper fare. proceeds in any such carriage beyond such distance and does not pay the

(Secs. 33-37.)

additional fare for the additional distance, or attempts to avoid payment thereof, or if any person knowingly and wilfully refuses or neglects on arriving at the point to which he has paid his fare to quit such carriage, every such person shall, for every such offence, be liable to a penalty not exceeding ten rupees.

Servant of promoters may arrest persons avoiding payment of fares.

Carriage of dangerous or offensive goods.

- 33. It shall be lawful for any servant of the promoters to arrest and take to the nearest police-station any person who shall be discovered in committing or attempting to commit any such offence as in the last preceding section mentioned, and who shall refuse to give his name and residence, and is unknown to such servant.
- 34. No person shall be entitled to carry or to require to be carried on any tramway any goods which may be of a dangerous or offensive nature, and if any person send by any tramway any such goods without distinctly marking their nature on the outside of the package containing the same, or otherwise giving notice in writing to the book-keeper or other servant of the promoters with whom the same are left at the time of such sending, he shall be liable to a penalty not exceeding fifty rupees for every such offence, and it shall be lawful for the promoters to refuse to accept or carry any parcel that they may suspect to contain goods of a dangerous or offensive nature, or to require the same to be opened to ascertain the fact.

Penalty for breach of by-laws. 35. Any person offending against any by-law made under the provisions of this Act shall forfeit for every offence any sum not exceeding twenty rupees to be imposed in such by-law[1] as a penalty for such offence.

PART VI

MISCELLANEOUS.

Promoters to be responsible for all damages. 36. The promoters shall be answerable for all accidents, damages and injuries happening through their act or default, or through the act or default of any person in their employment by reason or in consequence of any of their works or carriages, and in all cases where the promoters are not the local authority they shall save harmless the local authorities and their respective officers and servants from all damages and costs in respect of such accidents, damages and injuries.

Power for the local authority or police to regulate traffic on roads.

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37. Nothing in this Act shall limit the powers of the local authority or the police to regulate the passage of any traffic along or across any road along or across which any tramways are laid down, and such local authority or police may exercise their authority as well on as off the

^[1] For by-laws made under s. 35, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 38-39.)

tramway, and with respect as well to the traffic of the promoters as to the traffic of other persons.

The local authority shall not be liable to pay to the promoters any compensation for loss of traffic occasioned by the reasonable exercise of such authority.

38. Nothing in this Act shall be construed to prevent the local Reservation of nower authority or any corporate body or persons, in the exercise of the powers over roads. conferred upon them under any law for the time being in force, from opening, breaking up, widening, altering, diverting or improving any of the roads, bridges, drains or culverts traversed by the tramways for the purposes for which they may now lawfully open, break up, widen, alter, divert or improve the same:

Provided—

- (1) that they shall cause as little detriment or inconvenience to the promoters as circumstances admit;
- (2) that they may (if absolutely necessary, but not otherwise) order the temporary stoppage of traffic on the tramways or any of them on giving twenty-four hours' previous notice in writing to the promoters;
- (3) that before they commence any work whereby the traffic on the tramway will be interrupted, they shall (except in cases of urgency, in which cases no notice shall be necessary) give to the promoters notice of their intention to commence such work, specifying the time at which they will begin to do so; such notice to be given eighteen hours at least before the commencement of the work;
- (4) that in the event of their so interfering with or stopping the running of any tramway under this section, an abatement, proportioned to the length of road over which and time during which running is stopped, shall be made from the rent (if any) reserved and payable by the promoters;
- (5) that any alteration of the position of any of the tramways, or the making good of any injury or damage that may be occasioned thereto by reason of such widening, alteration or improvement, shall be executed by the promoters at the expense of the local authority.

Discontinuance of Tramways.

39. If at any time after the opening of any tramway for traffic the Tramways promoters discontinue the working of such tramway or of any part thereof to be removed to be removed the continue the working of such tramway or of any part thereof to be removed to be for the space of three calendar months (such discontinuance not being cases. occasioned by circumstances beyond the control of such promoters, for

(Sec. 40.)

which purpose the want of sufficient funds shall not be considered a circumstance beyond their control), and such discontinuance is proved to the satisfaction of the Local Government, the Local Government, if it think fit, may by order declare that the powers of the promoters in respect of such tramway or the part thereof so discontinued shall from the date of such order be at an end, and thereupon the said powers of the promoters shall cease and determine unless the same are purchased by the local authority in manner by this Act provided.

Where such order has been made the Engineer or other officer appointed on that behalf by the Local Government may, at any time after the expiration of two months from the date of such order, remove the tramway or part of the tramway so discontinued, and the promoters shall pay to such Engineer or officer the cost of such removal and of the making good of the road by such Engineer or officer.

Such cost to be certified by such Engineer or officer, whose certificate shall be final and conclusive.

And, if the promoters fail to pay the amount so certified within one calendar month after delivery to them of such certificate or a copy thereof, such Engineer or officer may without any previous notice to the promoters (but without prejudice to any other remedy which he may have for the recovery of the amount) sell and dispose of the materials of the tramway or part of the tramway removed, either by public auction or private sale, and for such sum or sums and to such person or persons as such Engineer or officer may think fit; and may out of the proceeds of such sale make and re-imburse himself the amount of cost certified as aforesaid and of the cost of sale, and the balance (if any) of the proceeds of the sale shall be paid over by the said Engineer or officer to the promoters.

Inability of Promoters.

Proceedings in case of inability of promoters. 40. If at any time after the opening of any tramway it appears to the local authority, or to the Magistrate of the district in which such tramway is situate, that the promoters of such tramway are insolvents, or that they are unable to maintain such tramway, or work the same with advantage to the public,

the Local Government, upon a representation to that effect made by such Magistrate or local authority, may direct an inquiry by a referee into the truth of the representation,

and if the referee shall find that the promoters are such insolvents or that they are unable to maintain such tramway or work the same with advantage to the public, the Local Government may, by order, declare that the powers of the promoters shall, at the expiration of six calendar months from the making of the order, be at an end,

(Sec. 41.)

and the powers of the promoters shall cease and determine at the expiration of the said period unless the same are purchased by the local authority in manner by this Act provided, and thereupon the Engineer or other officer appointed on that behalf by the Local Government may remove the tramway in like manner, and subject to the same provisions as to the payment of the costs of such removal, and to the same remedy for the recovery of such costs in every respect, as in cases of removal under the last preceding section.

Purchase of Tramways.

41. The local authority shall have the right of purchasing the authority to tramway, with the plant, buildings, stores, rolling-stock and everything have right connected therewith, upon the expiration of twenty-one years from the of purchasing date of the order of the Local Government authorizing the construction tramway of such tramway, upon declaring its intention so to do in writing not less after than six months before the expiration of the said twenty-one years, and years. shall have a renewal right of purchase at the end of every seven years after the expiration of the said twenty-one years upon similar notice being given; and the value to be placed upon the tramway shall be calculated in a manner to be settled in the agreement entered into between the promoters and the said local authority and set forth in the order of the Local Government:

Provided that the promoters and the local authority may, with the consent of the Local Government, provide in the said agreement for the sale and purchase of the tramway on the expiration of any shorter [1][or longer] periods than those hereinbefore specified.

^[1] The words "or longer" were inserted by the Bengal Tramways (Amendment) Act, 1904 (Ben. Act 1 of 1904), s. 2, post p. 723.

BENGAL ACT I OF 1885.

(THE BENGAL FERRIES ACT, 1885.)

CONTENTS.

PRELIMINARY.

PREAMBLE.

SECTION.

- 1. Short title.
- 2. Extent and commencement of Act.
- 3. Regulation VI of 1819 and Ben. Act I of 1866 repealed.
- 4. (Repealed.)

Interpretation.

PART I.

PUBLIC FERRIES.

- 6. Power to declare, establish, define and discontinue public ferries.
- 7. Control of public ferries vested in the Magistrate of the district.
- 8. Superintendence of public ferries. 9. Ferry tolls may be leased by auction.
- Execution of contract by lessee.
- 10. Lessee of the tolls of a public ferry and his servants bound to conform to rules.

 11. Provision for the establishment of subsidiary ferry.

 12. Recovery of arrears from lessee.

 13. Power to cancel lease.

 14. Surrender of lease.

- 15. Power to make rules in regard to public ferries.
- 17. Claims for compensation and what amount to be awarded.

 18. Tolls. 16. Private ferry not to ply within two miles of public ferry without sanction

- 19. Table of tolls.
 - List of tolls.
- 20. Tolls, rents, compensation and fines how to be appropriated.
- 21. Compounding for tolls.

PART II.

22. Power to make rules in regard to private ferries.

PART III.

PENALTIES AND CRIMINAL PROCEDURE.

- 23. Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic.
- 24. Penalty for taking unauthorized tolls, and for causing delay.
- 25. Penalty for breach of rules made under sections 15 and 22.
- 26. Cancelment of lease on default or breach of rules.
- 27. Penalties on passengers offending. 28. Penalty for plying within public ferry-course without license.
- 29. Fines payable to lessee.

SECTION.

- 30. Penalty for rash navigation and stacking of timber.
- 31. Power to arrest without warrant.
- 32. Magistrate may assess damage done by offender.

PART IV.

MISCELLANEOUS.

- 33. Power to take possession of boats and other appliances on surrender or cancellation of lease.
- 34. Similar power in cases of emergency.
 35. Management may be vested in District Board or Municipality.
 Power of Local Government to vest management of public ferries in a local authority.
 36. Delegation of powers.

BENGAL ACT I OF 1885.

(THE BENGAL FERRIES ACT, 1885.)[1]

(27th May, 1885.)

An Act to regulate Ferries in Bengal.

Whereas it is expedient to regulate ferries within the territories [2] Preamble. subject to the Lieutenant-Governor of Bengal;

It is enacted as follows:—

Preliminary.

1. This Act may be called the Bengal Ferries Act, 1885.

Short title.

2. It shall extend to all the territories[2] subject to the Lieutenant-Extent and Governor of Bengal:

commencement of Act.

[And it shall come into force on such date[8] as the Lieutenant-Governor may, by notification in the Calcutta Gazette, appoint in this behalf.

- 3. Regulation VI of 1819 and Bengal Act I of 1866 are hereby Regulation repealed; but all determinations, declarations, orders, and rules made, and Ben. engagements entered into, and securities taken, under such Regulation Act I of and Act shall be deemed to be respectively made, entered into and taken 1886 repealed. under this Act.
- 4. [Act not to apply to municipal ferries. (Repealed by Bihar and Orissa Act VII of 1922, section 2(1) and Schedule II.)
- 5. In this Act, unless there be something repugnant in the subject Interpretation. or context,-
 - " Commissioner " means the Commissioner of a Division:

" Commis-

- "ferry" includes a bridge of boats, pontoons or rafts, a swing-"Ferry." bridge, a flying-bridge, a temporary bridge, and a landing stage.
- "notification" means a notification published in the Calcutta "Notifica-Gazette: tion."
- "Private ferries" includes all ferries other than those declared to "Private be public ferries, or established as such, under section 6 of this Act. ferries."

[3] The Act came into force on the 1st August, 1885—see the Calcutta Gazette of

the 24th June, 1885, Pt. I, p. 610.

^[1] Legislative Papers.—For Statement of Objects and Reasons, see the Calcutta Gazette, 1885, Pt. IV, p. 39, and for Proceedings in Council relating to that Act, see ibid, Supplement, pp. 546, 553, 657 and 678.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur. The Act is in force in the Sonthal Parganas: see Vol. IV, Pt. IV; but its application is barred in the district of Angul by the Angul Laws Regulation, 1913 (2 of 1913), s. 3 (2), in Vol. I of this Code.

(Secs. 6-9.)

PART I.

PUBLIC FERRIES.

Power to declare, establish, define and discontinue public ferries.

- 6. It shall be lawful for the Lieutenant-Governor from time to time[1] to—
 - (a) declare what ferries shall be deemed public ferries, and the respective districts in which, for the purposes of this Act, they shall be deemed to be situate;
 - (b) take possession of a private ferry and declare it to be a public ferry;
 - (c) establish new public ferries where, in his opinion, they are needed;
 - (d) define the limits of any public ferry;
 - (e) change the course of any public ferry, and
 - (f) discontinue any public ferry which he deems unnecessary.

Every such declaration, establishment, definition, change or discontinuance, shall be made by notification:

Provided that, when any alteration in the course or in the limits of a public ferry is rendered necessary by changes in the river on which such ferry is established, such alteration may be made, by an order in writing, by the Magistrate of the district.

Control of public ferries vested in the Magistrate of the district.

Superintendence of public ferries.

- 7. The control of all public ferries shall be vested in the Magistrate of the district, subject to the direction of the Commissioner.
- 8. The immediate superintendence of every public ferry shall be vested in the Magistrate of the district in which such ferry is situated, or in such other officer as the Lieutenant-Governor may, from time to time, either by name or by official designation appoint.

And such Magistrate or officer shall, except when the tolls at such ferry are leased, make all necessary arrangements for the supply of boats for such ferry, and for the collection of the authorized tolls leviable thereat.

Ferry tolls may be leased by auction.

9. The tolls of any public ferry may, from time to time, be leased by public auction for such term as the Magistrate of the district in which such ferry is situated may, with the approval of the Commissioner, direct.

^[1] For a list of orders made under s. 6, clauses (a) to (f), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 10-14.)

The Magistrate of the district or the officer authorized by him to conduct such auction may, for sufficient reason to be recorded in writing, refuse to accept the offer of the highest bidder, and may accept any other bid, or may withdraw the tolls from auction.

The lessee of the tolls of every ferry which have been leased under Execution of this section shall execute a contract setting forth the conditions on which lessee. the tolls of such ferry are to be held, and shall give security for its due fulfilment.

10. When the tolls of a public ferry have been duly leased, the Lessee of the lessee and every servant of the lessee shall be deemed to be legally bound public ferry to conform to the rules made under this Act for the management and and his servants bound control of such ferry.

tolls of a to conform to rules.

11. On the requisition of the Magistrate of the district the person Provision in charge of a public ferry situate in such district shall maintain at one establishor more places, in addition to the place at which the said public ferry ment of is established, and within two miles therefrom, such number of subsi-ferry. diary ferries as may seem to the Magistrate to be necessary for the public convenience: and all the provisions contained in this Act in regard to the management and control of public ferries shall be deemed applicable to any subsidiary ferry maintained under the requisition of the Magistrate.

subsidiary

12. All arrears due by the lessee of the tolls of a public ferry on Recovery of account of his lease:

arrears from lessee.

any pecuniary forfeiture for breach of contract inserted in the deed of contract or conditions of sale by public auction; and

all sums due from the lessee on the surrender of his lease under section 14,

may be recovered from the lessee or his surety (if any) as a demand under Bengal Act VII of 1880, or any other Act[1] at the time being in force for the recovery of public demands.

13. The lease of the tolls of any public ferry shall be liable to be Power to cancelled at once by the Magistrate of the district in which such ferry is lease. situated, if it shall appear to such Magistrate that the lessee has failed to make due provision for the convenience or safety of the public within fifteen days after being required to do so by a notice in writing from such Magistrate.

14. The lessee of the tolls of a public ferry may surrender his lease Surrender cf on the expiration of one month's notice in writing to the Magistrate of the district in which such ferry is situated of his intention to surrender such lease, and on payment of such reasonable compensation as the Magistrate may, with the approval of the Commissioner, in each case direct.

^[1] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), printed in Vol. III of this Code.

(Sec. 15,)

Power to make rules in regard to public ferries.

- 15. The Magistrate of the district, with the approval of the Commissioner, may, from time to time make rules[1] consistent with this Act—
 - (a) for the management of all public ferries within such district, and for regulating the traffic at such ferries;
 - (b) for regulating the time and manner at and in which, the terms on which, and the person by whom, the tolls of such ferries may be leased by auction;
 - (c) for compensating persons who have compounded for tolls payable for the use of any such ferry when such ferry has been discontinued before the expiration of the period compounded for, and
 - (d) generally to carry out the purposes of this Act:

And when the tolls of a ferry have been leased under section 9, such Magistrate may, from time to time with such approval as aforesaid, make additional rules consistent with this Act,—

- (e) for collecting the rents payable for the tolls of such ferries;
- (f) for regulating the returns of traffic to be, from time to time, submitted by the lessee of such ferries;
- (g) in cases in which the communication is to be established by means of a bridge of boats, pontoons or rafts, or a swing-bridge, flying-bridge or temporary bridge, for regulating the time and manner at and in which such bridge shall be constructed and maintained, and opened for the passage of vessels and rafts through the same, and
- (h) in cases in which the traffic is conveyed in boats, for regulating the number and kinds of such boats and their dimensions and equipment;

the number of the crew to be kept by the lessee for each boat;

the maintenance of such boats in good condition;

the hours during which, and the intervals within which, the lessee shall be bound to ply, and

the number of passengers, animals and vehicles, and the bulk and weight of other things that may be carried in each kind of boat at one trip;

and may, from time to time, with such approval as aforesaid, repeal or alter such rules.

Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the Calcutta Gazette

^[1] For a list of rules made under s. 15, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 16-18.)

in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law.

the district, maintain a ferry to or from any point within a distance of ferry not to two miles from the limits of a rubble ferry. two miles from the limits of a public ferry: Provided that in the case of any specified public ferry, the without Lieutenant-Governor may, by notification,[1] reduce or increase the sanction.

said distance of two miles to such extent as he thinks fit:

16. No person shall, except with the sanction of the Magistrate of Private two miles of public ferry

Provided also that nothing hereinbetore contained shall prevent persons keeping boats to ply between two places, one of which is without, and one within, the said limits, when the distance between such two places is not less than three miles, or shall apply to boats which the Magistrate of the district expressly exempts from the operation of this section.

17. Claims for compensation for any loss sustained by any person Claims for in consequence of a private ferry being taken possession of or a new tion and public ferry, or subsidiary ferry, being established under section 6 or what amount to be section 11, shall be inquired into by the Magistrate of the district in awarded. which such ferry is situated, who shall, with the approval of the Commissioner, award compensation to any person who may appear justly entitled thereto.

compensa-

Such compensation shall be calculated upon an estimate of the annual net profit actually realized by such person from such ferry on an average of the five years next preceding such declaration, and shall in no case exceed the amount of fifteen times such net annual profit.

18. Tolls, according to such rates as may, from time to time, be Tolls. fixed by the Magistrate of the district with the approval of the Commissioner, shall be levied on all persons, animals, vehicles, and other things crossing any river by a public ferry and not employed or transmitted on the public service:

Provided that the Lieutenant-Governor may, from time to time, declare that any persons, animals, vehicles or other things shall be exempt[2] from payment of such tolls.

Where the tolls of a ferry have been leased under section 9, any such declaration, if made after the date of the auction, shall entitle the

^[1] For a list of orders made under this provise to s. 16, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[2] So much of section 18 as provides for the exemption from payment of tolls of any persons, animals, vehicles or other things which are exempted by section 3 of the Indian Tolls (Army) Act, 1901 (2 of 1901), is repealed by section 8 of that Act. For further exemptions from tolls, see sections 3 and 4 of the said Act, printed in General Acts, 1898-1909, Ed. 1928, p. 202.

(Secs. 19-23.)

lessee to such abatement of the rent payable in respect of the tolls as may be fixed by the Magistrate of the district under this section.

Table of tolls.

19. The lessee or other person authorized to collect the tolls of any public ferry shall affix a table of such tolls, legibly written or printed in the vernacular language, and also, if the Commissioner so directs, in English, in some conspicuous place near the ferry:

List of tolls.

and shall be bound to produce, on demand, a list of the tolls signed by the Magistrate of the district or such other officer as he appoints in this behalf.

Tolls, rents, compensation and fines how to be appropriated. 20. Except as provided by section 35 all tolls, rents, and compensation received by, or on behalf of the Government, and all fines levied under this Act, shall be appropriated in the first instance towards the payment of all charges incurred in carrying out the provisions of this Act, and the surplus, if any, shall be credited to such fund as the Lieutenant-Governor may from time to time direct.

Compounding for tolls.

21. It shall be lawful for the Magistrate of the district in which a public ferry is situated, with the approval of the Commissioner, from time to time to fix rates at which any person may compound for the tolls payable for the use of such ferry.

PART II.

PRIVATE FERRIES.

Power to make rules in regard to private ferries.

22. The Commissioner may from time to time make rules,[1] consistent with this Act, for the maintenance of order, and for the safety of passengers and property at private ferries situated in his division.

Rules made under this section shall be subject to the control of the Lieutenant-Governor, and shall be published in the *Calcutta Gazette* in such manner as the Lieutenant-Governor directs, and shall thereupon have the force of law.

PART III.

PENALTIES AND CRIMINAL PROCEDURE.

Penalty for breach of provisions as to table of tolls, list of tolls and return of traffic. 23. Every lessee or other person authorized to collect the tolls of a public ferry, who neglects to affix and keep in good order and repair the table of tolls mentioned in section 19.

^[1] For a list of rules made under s. 22, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 24-27.)

or who wilfully removes, alters or defaces such table, or allows it to become illegible,

or who fails to produce on demand the list of the tolls mentioned in section 19.

and every lessee who neglects to furnish any return required under section 15.

shall be punished with fine which may extend to fifty rupees.

- 24. Every such lessee or other person as aforesaid asking or taking Penalty for more than the lawful toll, or without due cause delaying any person, authorized animal, vehicle or other thing, shall be punished with fine which may tolls, and for extend to one hundred rupees.
- 25. Every person breaking any rule made under section 15 or Penalty for section 22 shall be punished with imprisonment for a term which may breach or rules made extend to three months, or with fine which may extend to two hundred under secrupees, or with both.
- 26. When any lessee of the tolls of a public ferry makes default in Cancelment the payment of the rent payable in respect of such tolls, or has been of lease on default or convicted of an offence under section 25, or, having been convicted of an breach of offence under section 23 or section 24, is again convicted of an offence rules. under either of those sections, the Magistrate of the district may [1]
- *] cancel the lease of the tolls of such ferry, and make other arrangements for its management during the whole or any part of the term for which the tolls were leased.
- 27. Every person crossing by any public ferry who refuses to pay Penalties on the proper toll; and every person—

who, with intent to avoid payment of such toll, fraudulently or forcibly crosses by any such ferry without paying the toll, or

who obstructs any toll-collector or lessee of the tolls of a public ferry, or any of his assistants, in any way in the execution of their duty under this Act, or

who, after being warned by any such toll-collector, lessee or assistant not to do so, goes, or takes any animals, vehicles or other things, into any ferry-boat, or upon any bridge at such a ferry, which is in such a state or so loaded as to endanger human life or property, or

who refuses or neglects to leave, or remove any animals, vehicles or goods from any such ferry-boat or bridge on being requested by such toll-collector, lessee or assistant to do so, or

who moors any boat, raft, or other substance to, or in any wav obstructs, any part of a public ferry,

shall be punished with fine which may extend to fifty rupees.

causing delay.

tions 15 and

passengers offending.

^[1] The words "with the approval of the Commissioner" in s. 26 were omitted by the Bihar and Orissa Ferries (Amendment) Act, 1914 (B. & O. Act 2 of 1914), s. 2 in Vol. III of this Code.

(Secs. 28-33.)

Penalty for plying within public ferry-course without license. Fines payable to lessee.

- 28. Whoever conveys for hire any passenger, animal, vehicle or other thing in contravention of the provisions of section 16 shall be punished with fine which may extend to fifty rupees.
- 29. Where the tolls of any public ferry have been leased under the provisions hereinbefore contained, the whole or any portion of any fine realized under section 27 or section 28 may, notwithstanding anything contained in section 20, be, at the discretion of the convicting Magistrate or Bench of Magistrates, paid to the lessee.

Penalty for rash navigation and stacking of timber.

30. Whoever navigates, anchors, moors or fastens any vessel or raft, or stacks any timber, in a manner so rash or negligent as to damage a public ferry, shall be punished with imprisonment for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both; and the toll-collector or lessee of the tolls of such ferry, or any of his assistants, may seize and detain such vessel, raft or timber pending the inquiry and assessment hereinafter mentioned.

31. The police may arrest without warrant any person committing an offence against section 27 or section 30.

Power to arrest without warrant. Magistrate may assess damage done by offender.

32. Every Magistrate or Bench of Magistrates trying any offence under this Act may inquire into and assess the value of the damage (if any) done or caused by the offender to the ferry concerned, and shall order the amount of such value to be paid by him in addition to any fine imposed upon him under this Act; and the amount so ordered to be paid shall be leviable as if it were a fine, or when the offence is one under section 30 by the sale of the vessel, raft or timber causing the damage, and of anything found in or upon such vessel or raft.

The Commissioner may, on the appeal of any person deeming himself aggrieved by an order under this section, reduce or remit the amount payable under such order.

PART IV.

MISCELLANEOUS.

Power to take possession of boats and other tion of lease.

33. On the cancelment or surrender of a lease, the Magistrate of the district may take possession of all boats and other appliances which have been used by the lessee in the working of the ferry; and may either appliances on surrender retain the same permanently on payment of a fair price to the proprietor, or cancella- or may retain them for such time as may be necessary, not exceeding three months, until he can make arrangements for such other boats and appliances as may be necessary, in which case the Magistrate of the district shall pay a fair sum to the owners for the use of the said boats and appliances:

(Secs. 34-35.)

Provided that, within a week of taking such possession, the Magistrate of the district shall be bound to give notice to the said lessee of his intention to retain the said boats and appliances permanently, or for a period to be specified in the notice.

34. When any boats or their equipment, or any materials or Similar appliances suitable for setting up a ferry, are emergently required for power in facilitating the transport of officers or troops of Her Majesty on duty, emergency. or of any other persons on the business of Her Majesty, or of any animals, vehicles or baggage belonging to such officers, troops or persons, or of any property of Her Majesty, the Magistrate of the district may take possession of and use the same (paying such compensation for the use thereof as the Lieutenant-Governor may in each case direct) until such transport is completed.

Power of Local Fovernment to vest management of public ferries in a local authority.

[1]35. It shall be lawful for the 35. [2] It shall be lawful for the Management the powers specified in sections 7, 17 and 32, and the Local Government may further order that all or any part of the proceeds of such ferry and all or any part of the fines levied, and compensation received, under this Act in respect thereof, managed and such proceeds, fines the

Local Government to order that any Lieutenant-Governor to order[s] may be vested in public ferry shall be managed by a that any public ferry situated in District local authority having jurisdiction any district in which a District Board or Municiover the area or any part of the area Board has been established under pality. in which such ferry is situated, and the provisions of the Bengal Local such local authority shall have all Self-Government Act of 1885[4] Ben. Act III of 1885. the powers vested in the Magistrate [5] [or situated, within or adjacent of the district under this Act except to the limits of any Municipality, shall be managed by such District Board or by the Commissioners of such Municipality as the case may be]; and such District Board shall have all the powers vested in the Magistrate of the district under be paid to such local authority; and this Act except the powers specithereupon such ferry shall be fied in sections 7, 17, and 32, and Lieutenant-Governor

^[1] Section 35 will take effect in this form in respect of a Union in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is declared to be in force-see s. 2 (1) and Sch. I of that Act in Vol. III of this

^[2] Section 35 will take effect in this form in Unions in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is not in force.

^[3] For a list of orders made under sec. 35, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[4] Now the Bihar and Orissa Local Self-Government Act of 1885. Printed post,

^[5] The words in square brackets were substituted for the words "shall be managed by such district board" by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), s. 2 (2) and Sch. III, in Vol. III of this Code.

(Sec. 36.)

and compensation shall be paid accordingly.

further order[1] that all or any part of the proceeds of such ferry and all or any part of the fines levied. and compensation received, under this Act in respect thereof, be paid into the [2] [District or Municipal Fund as the case may be.]

And thereupon such ferry shall be managed, and such proceeds. fines and compensation shall be paid accordingly.

The Lieutenant-Governor may from time to time vary or annul order made under section.

Delegation of powers.

36. The Lieutenant-Governor may, from time to time, delegate,[3] under such restrictions as he thinks fit, any of the powers conferred on him by this Act to any Commissioner or Magistrate of a district, or to such other officer or authority as he thinks fit, by name or by official designation.

[1] For a list of orders made under s. 35, see the Bihar and Orissa Local Statutory

Rules and Orders, Vol. I, Pt. VI.

[2] The words in square brackets were substituted for the words "District Fund" by the Bihar and Orissa Municipal Act, 1922 (B. and O. Act 7 of 1922), s. 2 (2) and Sch. III in Vol. III of this Code. As to the crediting to the District Fund of receipts from public ferries, see also s. 52 (4) of the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), printed post, p. 544.

[3] For a list of orders, made under s. 36, see the Bihar and Orissa Local Statutors Rules and Orders, Vol. I. Pt. V1.

BENGAL ACT 3 OF 1885.

[THE BIHAR AND ORISSA LOCAL SELF-GOVERNMENT ACT, 1885.]

CONTENTS.

PRELIMINARY.

PREAMBLE.

SECTION.

- 1. Short title.
 - Extent.
- Commencement.
- 2. Enactments repealed and amended.
- 3. Office held under repealed provisions of Bengal Act IX of 1880 to continue in existence until its abolition or confirmation by District Board.
- 4. Act not to come into force in cantonments without sanction of Governor General in Council.
- Interpretation.
 - "Commissioner." "Local Authority."
 - "Municipal authority."
 "Notification."

 - "Magistrate of the district."
 - "Salaried servant of Government."
 - "Financial year."
 "Cess year."
 "Sanitation."

PART I.—LOCAL AUTHORITIES.

CHAPTER I. DISTRICT BOARDS AND LOCAL BOARDS.

Constitution of District Boards and I ocal Boards.

- 6. District and Local Boards.
- 7. Constitution of District Boards.
 8. Appointment of members.
 9. Publication of names.

- 10. Constitution of Local Boards.
- 11. Qualifications of members and voters.
- 12. Power to form electoral circles.
- 13. Term of office of members.
- 14. Resignation of office of members.

- 15. Removal of members.
 16. Vacation of office by salaried servant of Government.
 17. Effect of vacation of office of elected member of District Board or Local Board
- 18. Casual vacancies.

Chairman and Vice-Chairman.

- 19. Election or appointment of Chairman of District Board. 20. Election or appointment of Chairman of Local Board.

- 21. Status of appointed Chairman.
 22. Election of Vice-Chairman of District and Local Boards.
- 23. Grant of leave to Chairman or Vice-Chairman.

SECTION.

- 24. Term of office of Chairman and Vice-Chairman.
- 25. Meeting for election of Chairman and Vice-Chairman
- 26. Resignation of Chairman or Vice-Chairman. 27. Removal of Chairman and Vice-Chairman.
 28. Casual vacancies.
 29. Incorporation of District Board.

- 29A. Proceedings not to be invalidated by casual vacancies.

Joint Committees.

30. Joint Committees.

Conduct of Business.

31. Record and publication of proceedings.

Resolutions passed by District Board or Local Board how to be treated

32. Power to make rules as to business and affairs.

Establishments.

33. District Board may appoint establishments and fix salaries.

34. (Repealed.)

35. Pensions and gratuities to be paid out of the District Fund.

35A. Provident Fund.

36. Union Committee may appoint establishment and fix salaries.

CHAPTER II. UNION COMMITTEES.

37. Operation of Chapter.38. Formation of Unions.

- 39. Election of members of Union Committees.

40. Appointment on failure to elect.

- 41. Appointment in substitution of election.
 41A. Chairman of Union Committee.
 42. Term of office of members.
 43. Filling of casual vacancies.
 44. Joint Union Committees.

PART II.—FINANCE.

GENERAL.

45. Local Government may direct that funds of existing local bodies shall be vested in new local authorities.

CHAPTER I.

46. District Board to fix rate of road-cess annually.

46A. Local Government to prescribe minimum closing balance, statements, etc.

47. Budget estimate.

48. Power of Local Government as to budget estimate.

49. How details of budget estimate may be altered.50. District Boards may raise loans and may form a sinking fund.51. Estimates and audit of accounts of Local Boards.

CHAPTER II. THE DISTRICT FUND.

52. Constitution of District Fund. District Fund to be vested in Board.

53. Application of District Fund.

53A. Temporary or accidental deviations from provisions relating to crediting or application of District Fund.

54. Accounts of District Fund how to be kept and published. 55. Finance Committee.

Its duties.

CHAPTER III. THE UNION FUND.

SECTION.

56. Constitution of Union Fund.

Union Fund to be vested in Union Committee.

57. Application of Union Fund.

58. Accounts of Union Fund how to be kept and published.

PART III.—Duties and powers of logal authorities.

CHAPTER I. Duties and Powers of District Boards.

59. Operation of provisions included under headings A to E.

60. Operation of provisions included under headings F to I.

A .- Pounds.

61. Powers of District Boards in respect of Pounds.

B.—Education.

62. Primary and middle schools under public management.

63. Other schools.64. High English schools.

64A. Provision, maintenance and management of students' hostels.

65. Transfer of funds by Government to District Board.

65A. Site of students' hostels.

65B. Constitution and functions of Education Committee.

C.—Medical.

66. District Board to have control and administration of public charitable dispensaries or hospitals within the district.

67. District Board may establish and maintain dispensaries and hospitals.

67A. Management of hospitals and dispensaries by Joint Committee.

68. Two more District Boards may combine to establish dispensaries.

69. District Board may contribute to cost of maintenance of dispensary or hospital outside district.

70. Power to provide temporary supply of medicine and medical assistance.71. District Board to conform to rules made by Local Government.

D .- Public Works.

72. Constitution and functions of Public Works Committee.

73. Transfer to District Boards of roads and other property of District Road Committee.

74. Government may place other property under District Boards. 75. Works constructed by District Board to be vested in it.

76. District Board may, with consent of owners, take over and repair works.

77. District Board to submit schedules of public works.

78. District Board to repair and maintain works. 78A. Power to turn, divert, discontinue or close road.
79. Miscellaneous improvements.

80. District Board may construct and maintain railways or tramways.

81. District Board may subscribe to debenture loan to construct and maintain railways or tramways.

82. District Boards may guarantee interest on capital expended on works of communication.

83. District Board may undertake construction, repair and maintenance of Government buildings.

84. District Board to appoint Engineer and his subordinates.

85. Duties of District Engineer.

86. Powers of Boards under sections 78 and 79 to be subject to rules for approval of plans.

D(1).—Tolls on Bridges.

86A. Power of District Board to establish toll-bars and levy tolls.

26B. Lease of toll-bar.

86C. Procedure where two District Boards have contributed towards cost of bridge, etc.

SECTION.

86D. Exemptions.

86E. Rates of tolls.

86F. Table of tolls to be hung up.

86G. Power to compound for tolls.

86H. Power of toll-collector or lessee in case of refusal to pay toll.

86J. Penalty for refusing to pay toll.

86K. Police officers to assist.

86L. Penalty for taking unauthorized tolls. 86M. District Board to publish expenses, etc., of toll-bars.

E.—Sanitation.

87. District Board to provide for sanitation.

88. General powers for supplying district with water.

88A. Power to contribute towards cost of municipal water-supply or prevention of plague.

89. Public streams, channels, water-courses, tanks, reservoirs, springs and wells to be under control of District Board.

90. District Board may set apart tanks, parts of rivers, streams or channels for drinking and culinary purposes.

91. Constitution and functions of Sanitation Committee.

91A. Appointment of Health officers, etc. 91B. Constitution and functions of Public Health Board.

F.—Vaccination.

92. District Board to have supervision of vaccinators within their districts. 93. District Board to appoint Inspectors of Vaccination.

34. District Board to have powers of Magistrate in district to which the Vaccination Act extends.

35. Commissioner to make rules for guidance of District Boards. 36. Act to be read with the Bengal Vaccination Act.

G .- Census.

97. Commissioner may direct District Board to take a census.

98 Powers for taking census.

H .- Famine and distress.

99. District Board may take relief measures in case of famine or serious distress, 99A. Irrigation work for relief of famine or scarcity.

I .- Miscellaneous.

100. Miscellaneous powers of District Board.

Staging bungalows and serais.

Rewards for destruction of noxious animals

Fairs and exhibitions.
Veterinary dispensaries.
Treatment of diseases of animals.

Breeding of animals.

Grants-in-aid of agricultural and veterinary improvements.

Works not otherwise provided for.

CHAPTER II. DUTIES AND POWERS OF LOCAL BOARDS.

101. Duties of Local Board.

102. Limits on expenditure of Local Board.

103. Returns by Local Board.

CHAPTER III. DUTIES AND POWERS OF UNION COMMITTEES.

104. Union Committee to be subordinate to District Board.

105. Union Committee to submit reports, estimates and accounts to District Board.

106. Limits on expenditure of Union Committee.

107. Union Committee to send schedule of roads and bridges to District Board.

108. Village roads and bridges placed under control and administration of Union Committee,

SECTION.

109. Maintenance and repair of village roads and bridges.

110. District Board may delegate management of portions of district roads to Union Committee.

111. Pounds.

112. Primary schools.

113. Dispensaries.

114. Registration of births and deaths.

115. Duties of Union Committee as to sanitation, conservancy and drainage. 116. Powers of Union Committee as to sanitation, conservancy and drainage.

117. Cleansing of villages.
118. Power of Union Committee to control building, and penalties for disobedience.

118A. Water-supply. 118B. Power of entry.

118C. Method of meeting cost of works of sanitation, drainage and conservancy of villages.

118D. Appeals against orders, awards and assessments.

119. Power of District Board to subordinate Union Committee to Local Board.

PART IV.

CONTROL.

120. Powers of Local Government and of Commissioners and of Magistrates of districts with respect to proceedings of local authorities.

121. Records to be open for inspection of Commissioner or of Magistrate of district.

122. Power of Commissioner or of Magistrate to inspect works.

123. Appointment of Inspector of Local Works, and duties to be performed by him.

124. Power to suspend action of local authorities by Magistrate of district.

125. Power to provide for performance of duties in case of default by District Board.

126. Extraordinary powers in case of emergency.

127. Magistrate's order under sections 124 and 126 to be reported to Local Government, who may confirm, modify or rescind it.

128. } (Repealed.)

- 130. Powers and duties of Magistrate of district transferred to District Board and Local Board.
- 131. Power of Local Government to dissolve or supersede District Boards, Local Boards and Union Committees.

132. Consequences of supersession.

133. Disputes between two or more Union Committees when to be referred to District Board or Local Board.

134. (Repealed.) 135. Disputes between two or more Local Boards to be referred to District Board.

136. (Repealed.)137. Decision of disputes not otherwise provided for.

138. Power of Local Government to make rules.

By-LAWS.

139. Power of District Board and Local Board to make by laws.

140. Penalty for infringement of by-laws.

141. Prosecutions.

MISCELLANEOUS PROVISIONS.

142. Liability of members of Boards and Union Committees.

143. Procedure for making rules and by-laws.

144. Penalty on member, officer or servant being interested in contracts made with a local authority.

145. Power to make compensation out of the local fund.

145. No action to be brought against Boards and Committees or their officers until after one month's notice of cause of action.

BENGAL ACT 3 OF 1885.

THE [1] BIHAR AND ORISSA LOCAL SELF-GOVERNMENT ACT OF 1885.[2]

(22nd July, 1885.)

An Act to extend the system of Local Self-Government in [8] [Bihar and Orissa].

Whereas it is expedient to extend the system of Local Self- Preamble. Government within the territories subject to the Government of [4][Bihar and Orissa]; It is enacted as follows:—

Preliminary.

1. This Act may be called the [5] [Bihar and Orissa] Local Self-Short title. Government Act of 1885.

[6] [It shall extend to the whole of the Province of Bihar and Orissa Extent including the Santal Parganas but excluding any area within the limits B. & O Act of Patna, as defined in section 2 of the Patna Administration Act, 1915, 1 of 1915. or of any place or town to which the provisions of the Bihar and Orissa B. & O Act Municipal Act, 1922, have been, or may hereafter be, extended: 7 of 1922.

> [1] The original short title, viz., The Bengal Local Self-Government Act of 1885 was changed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923). See section 3(a) of that Act, in Vol. III of this Code.

D20—000, 609—119 and 700—778.

[3] The words "Bihar and Orissa" were substituted for the word "Bengal by the Bihar and Orissa Local Seif-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2 (1), in Vol. III of this Code.

[4] The words "Bihar and Orissa" were substituted for the words "the Lieutenant-Governor of Bengal" by ibid, section 2(2).

[5] The words "Bihar and Orissa" were substituted for the word "Bengal" by ibid section 3(2).

ibid, section 3(a).

[6] This paragraph in square brackets was substituted for the original paragraph by ibid, section 3(b).

LOCAL EXTENT. - The Bengal Local Self-Government Act of 1885 (Ben. Act III of 1885), did not apply to the Sonthal Parganas and by notification no. 3674-P., dated the 21st June, 1923 (published in Part II of the Bihar and Orissa Gazette, dated the 27th June, 1923), issued in exercise of the powers conferred by the Governor-General in Council under sub-section (2) of section 52-A of the Government of India Act in the notification of the Government of India in the Reforms Office, no. 4-G., dated the

⁽B. & O. Act 1 of 1923). See section 3(a) of that Act, in Vol. III of this Code.

[2] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons of the original Act, see Calcutta Gazette, 1883, Part IV, page 99; for Preliminary Report of Select Committee, see ibid, 1884, Part IV, page 61; for further Report of Select Committee, see ibid, 1885, Part IV, page 13; and for proceedings in Council, see ibid, 1885, Supplement, pages 90, 260, 365, 401 and 529; ibid, 1884, Supplement, pages 262 and 560; ibid, 1885, Supplement, pages 549, 658 and 683; and for Statement of Objects and Reasons of the amending Act of 1923, see the Bihar and Orissa Gazette, 1922, Part V, page 401, and for Report of Select Committee, see ibid, 1923, Part V, page 2, and for proceedings in Council see Volume V, pages 472—518, and Volume VII, pages 623—665, 669—719 and 730—779.

[3] The words "Bihar and Orissa" were substituted for the word "Bengal

(Secs. 2-3.)

Commencement.

And it shall come into force in any district on such date as the [1] [Local Government] may, by notification, [2] direct.

[Any notification, order or rule and any appointment to an office, may be made, or election held, under this Act after it shall have received the assent of the Governor General, and shall take effect in any district on this Act coming into force therein.]

Enactments repealed and amended.

2. On this Act coming into force in any district, the enactments specified in the first and second Schedules shall, as regards such district, be repealed to the extent mentioned in the third column of the first Schedule, and be amended to the extent mentioned in the third column of the second Schedule.

But this repeal shall not revive any office, authority, or thing abolished by such enactment, or affect the validity of anything which has been done or suffered, or any right, title, obligation, or liability which has accrued before the commencement of this Act.

Office held under repealed Bengal Act in existence until its abolition or confirmation by District Board.

3. Every person holding office in any district under the repealed provisions of the Cess Act, 1880,[3] shall continue to hold such office Ben. Act 9 provisions of until it shall be abolished, or a new appointment made in respect thereof, IX of 1880 by the District Board established in such district under the provisions to continue of this Act:

Provided that, if for a period of twelve months from the date on which this Act comes into force in any district, the District Board does not abolish such office or make such appointment as aforesaid, the person holding such office shall be deemed to have been appointed to it under the provisions of this Act:

Provided, further, that, if such office shall be abolished or a new appointment made in respect thereof, compensation, pension or gratuity shall be paid from the District Fund to any person not being a servant

The application of this Act is barred in the district of Angul by the Angul Laws Regulation, 1913 (Meg. 3 of 1913), section 3(2), printed in Vol. I of this Code.

These modifications which affect sections 19, 20, 24, 25 and 27 of the Bihar and Orissa Local Self-Government Act of 1885 (Ben. Act 3 of 1885), are shown against those sections in the text.

[1] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 3 (c), in Vol. III of this Code.

[2] For a list of notifications issued under this paragraph of section 1, see the Bihar and Orissa Local-Statutory Rules and Orders, Volume I, Part VI.

[3] Printed ante, p. 369.

³rd January, 1921, the Governor in Council has directed that the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), by which this paragraph has been substituted for the original paragraph of the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), shall not apply to the Southal

In the Chota Nagpur division the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), applies subject to certain modifications, vide notification no. 3674-P., dated the 21st June and notification no. 3675-P. of the same date, both published in Part II of the Bihar and Orissa Gazette, dated the 27th June, 1923.

(Secs. 4-5.)

of 1880.

of the Government who may be deprived of such office, and the amount of such pension or gratuity shall be calculated in accordance with any rules made under the provisions of section 138 of the Cess Act, 1880;[1] cr if no such rules have been made, the amount shall be calculated in accordance with the rules regulating the payment of compensation, pensions and gratuities to uncovenanted servants of the Government.

4. Notwithstanding anything in section 1, this Act shall not come Act not to into force in any cantonment without the sanction of the Governor-force in General in Council previously obtained.

cantonments without sanction of Governor-General in Council.

5. In this Act, unless there be something repugnant in the subject Interpretaor context,-

tion. " Commis-

sioner."

[2] "local authority" means any [3] "local authority" Joint Committee, Union Committee or Joint Union Committee, constituted under this Act:

"Commissioner" means the Commissioner of a Division: means " Local District Board or Local Board, any District Board, Local Board authority." or Joint Committee constituted under this Act, or any Union Board constituted under the Bihar and Orissa Village Administration Act, 1922:

ь. & O. Act

3 of 1922. "municipal authority" means the Commissioners of a municipality "Municipal B. & O. Act constituted under the provisions of the [4] [Bihar and Orissa Municipal authority. 7 of 1922. Act, 19227:

"notification" means a notification published in the [5][official] "Notifica-Gazette:

"Magistrate of the district" includes any Magistrate subordinate "Magistrate to the Magistrate of the district, to whom he may delegate all or any of the of his powers under this Act:

[6][" salaried servant of Government" means a wholetime officer "Salaried of Government who receives his salary direct from Government, and Government

of 1922), is not in force. [8] This definition of "local authority" is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See section 2(1) of and Schedule I to that Act in Vol. III of this Code.

[4] The words and figures "Bihar and Orissa Municipal Act, 1922" were substituted for the words and figures "Bengal Municipal Act, 1884" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section

4 (a), in Vol. III of this Code.
[5] The word "official" was substituted for the word "Calcutta" by ibid, section 4(b).

^[1] Printed ante, p. 425. [2] This definition of "local authority" is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3

^[6] This definition of " salaried servant of Government " was substituted for the original definition by ibid, section 4(c).

(Sec. 6.)

includes a manager of an estate under the Court of Wards and an officer whose services have been lent by Government to a local authority, but does not include a retired servant of Government in receipt of a pension :

" Financial year."

"financial year" means the year commencing on the first day of April:

" Cess year.'

[1][" cess year" means the cess year as determined by the Board Ben. Act 9 of Revenue under section 11 of the Cess Act, 1880 [2]: and

" Sanitation."

[3][" sanitation" includes water-supply, conservancy and drainage, and any other measures for the improvement of the public health and the prevention of public nuisances].

PART I.

LOCAL AUTHORITIES.

CHAPTER I.

DISTRICT BOARDS AND LOCAL BOARDS.

Constitution of District Boards and Local Boards.

District and Local Boards.

[4] [6. (1) The Local Government shall, by notification, establish a District Board for every district.

(2) The Local Government may, by notification, [5] establish a Local Board for any subdivision or part of a subdivision or for any two or more subdivisions combined:

Provided that before publishing a notification under this sub-section the Local Government shall cause to be published in the official Gazette, and in such other manner as it may direct, a notice of its intention to establish such Local Board, and shall take into consideration any objection that may be made through the District Magistrate within two months from the date of the notice by any inhabitant of the area for which such Local Board is proposed to be established.

(3) A District Board shall have authority for the purposes of this Act over the district for which it is established, and a Local Board shall

^[1] This definition of "cess year" was substituted for the original definition by the Bihar and Orissa Local Self-Government (Amendment) Act, 1925 (B. & O. Act 1 of 1923), section 4 (d) in Vol. III of this Code.

[2] Printed ante, p. 375.

[3] The original definition of "sanitation" was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 3, and the present definition was substituted for the original definition by the Bihar and Orissa Local Self-Government (Amendment) Act, 1925 (B. & O. Act 1 of 1923), section 4(e), in Vol. III of this Code Vol. III of this Code.

^[4] These sections 6-29 (both inclusive) were substituted for the original sections 6-29 by *ibid*, section 5.

^[5] For notifications under section 6(2) (repealed and re-enacted by B. & O. Act 1 of 1923, section 5), including those which are kept in force by virtue of section 27 of the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Secs. 7-10.)

have authority over such area as the Local Government may, by notification, direct.]

[1][7. The Local Government shall, by notification,[2] fix—

Constitution of District Boards.

- (a) the total number of members of the District Board,
- (b) the number of such members who shall be elected,
- (c) the number of such members who shall be appointed, and may in like manner, on the recommendation of the District Board, alter any number so fixed:

Provided that-

- (i) the total number of members shall not be more than forty;
- (ii) the number of elected members shall not be less than threefourths of the total number of members; and
- (iii) not less than one-third of the appointed members shall be persons who are not salaried servants of Government.]
- [1] [8. (1) The members whose number is fixed under clause (c) of Appointsection 7 shall be appointed by the Local Government, and if the members. electorate in any district fails, within such time as may be prescribed by rules made by the Local Government in this behalf, to elect the number of members fixed under clause (b) of the said section, the Local Government shall, notwithstanding anything contained in the proviso to the said section, appoint members to make up that number.
- (2) The power vested in the Local Government to make appointments under sub-section (1) shall be exercised with a view to secure—
 - (a) the representation of minorities and special interests which, in the opinion of the Local Government, are insufficiently represented by the elected members; and
 - (b) the association in District Board administration of persons specially fitted in the opinion of the Local Government for appointment as members.
- [1] [9. The names of members elected and appointed shall be Publication published in the official Gazette.] of names.
- [1][10. (1) A Local Board shall consist of the members elected to Constitution the District Board by the electorate of the area over which the Local Boards. Board has authority, and of such number of additional members, not exceeding one-third of the number of elected members, as the Local Government may, by notification,[3] direct.
- (2) The additional members shall be appointed by the District Board, subject in the case of an appointment of a salaried servant of

^[1] See footnote [4] at page 524.
[2] For a list of notifications under s. 7, see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VI.
[3] For a list of notifications under s. 10(1), see the B. & O. Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 11.)

Government to the approval of the Commissioner. The power vested in the District Board to make appointments under this sub-section shall be exercised with a view to secure—

- (a) the representation of minorities and special interests which, in the opinion of the District Board, are insufficiently represented by the elected members; and
- (b) the association in Local Board administration of persons specially fitted in the opinion of the District Board for appointment as members.
- (3) The District Board shall communicate the names of the additional members through the Commissioner to the Local Government, and the Local Government shall thereupon cause the names of such members, together with the names of the elected members of the Local Board, to be published in the official Gazette.]

Qualifications of members and voters.

- [1][11.(1) The Local Government shall by rules[2] consistent with this Act prescribe the qualifications—
 - (a) of candidates for election as members of a District Board; and
 - (b) of voters at such elections:

Provided that no person shall be eligible for election if such person—

- (i) is not resident within the district or within a municipality in the district;
- (ii) is not a British subject or the subject of any State in India, provided that the Local Government may, with the approval of the Governor-General in Council, exempt any alien or class of aliens from this disqualification;
- (iii) has not attained the age of twenty-one years;
- (iv) has been adjudged by a competent court to be of unsound mind;
- (v) is an undischarged insolvent, or being a discharged insolvent has not obtained from the Court a certificate that his insolvency was caused by misfortune without misconduct on his part; or
- (vi) is a salaried servant of Government.
- (2) In the district of Manbhum, and in any other district to which this sub-section may, by notification, [3] be applied, the Local Government may direct that such proportion of the members to be elected for the district as it thinks fit shall be elected by any association representative

^[1] See footnote [4] at page 524.
[2] For rules under s. 11(1), see the B. & O. Local Statutory Rules and Orders,
Vol. 1, Pt. VI.

^[3] This sub-section has been extended to the district of Hazaribagh, vide notification no. 293-L. S.-G., dated the 8th March 1924.

(Secs. 12-13.)

of persons paying local cess under the provisions of Chapter V of Ben. Act 9 the Cess Act, 1880,[1] whether the members of such association are of 1880. resident within the district or not.]

> [2][12. (1) For the purpose of election of members of a District Power to Board the Local Government may, with respect to District Boards electoral generally or any District Board or class of District Boards in particular, circles. by rules[8] made under this Act after previous publication, make provision for the division of the district into electoral circles and prescribe the number of members to be elected for each circle.

- (2) In any district which has been divided into electoral circles under sub-section (1) no person shall be eligible for election for any such circle unless he is resident within the limits of the subdivision or subdivisions in which such circle is situated, or in a municipality within such limits.
- (3) For the purposes of this section and section 11 a person shall be deemed to be resident within the limits of a particular area if he-
 - (a) ordinarily lives within those limits;
 - (b) has his family dwelling-house within those limits, and occasionally visits it; or
 - (c) maintains within those limits a dwelling-house ready for occupation in the charge of servants, and occasionally occupies it.

Explanation .- A person may be resident within the limits of more than one district. subdivision and municipality at the same time.]

[2][13. Save as is otherwise provided in this Act—

Term of memi ers.

- (1) a member of a District Board or Local Board elected at a general office of election of members of a District Board shall hold office for three years commencing from the date of the general election;
 - (2) an appointed member of a District Board or Local Board newly constituted after a general election shall hold office for three years or for such shorter period as may be specified in the order appointing him, and such appointment shall be deemed to have been made on the date of the general election;
 - (3) a member elected or appointed to fill a vacancy in a District Board or Local Board shall hold office for the unexpired residue of the

^[1] Printed ante, p. 405.
[2] See footnote [4] at page 524.
[5] For rules under s. 12(1), see the B. & C. Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 14-15.)

term of office of the member in whose place he has been elected or appointed; and

(4) an outgoing member of a District Board or Local Board may be re-appointed or, if otherwise qualified, re-elected.]

Resignation of office of members.

[1] [14. A member of a District Board or Local Board may resign his office in writing to the Chairman of the District Board who shall forthwith lay such notice of resignation before the District Board and, on the resignation being accepted, the office shall become vacant.]

Removal of members.

- [1][15. (1) The Local Government may remove any member of a District Board, Local Board or Union Committee elected or appointed under this Act, if such member is guilty of misconduct in the discharge of his duties, or if he is convicted of any such offence, or subjected by a criminal court to any such order, as implies moral turpitude which in the opinion of the Local Government unfits him to be a member, and if a resolution recommending his removal has been supported by not less than two-thirds of the whole number of the members of the District Board at a meeting specially convened for the purpose.
 - (2) The Local Government may remove any member of a District Board, Local Board or Union Committee—
 - (a) if he refuses to act or becomes incapable of acting, or is declared insolvent:
 - (b) if he, without an excuse sufficient in the opinion of the Local Government, absents himself from six consecutive meetings of the District Board, Local Board or Union Committee, as the case may be, without having obtained previously permission from the Chairman of such District Board, Local Board or Union Committee;
 - (c) if, in the judgment of the Local Government to be recorded in writing, he has become disqualified to continue in office under section 144; or
 - (d) if he, being a legal practitioner, acts or appears in any suit or other proceeding on behalf of any other person against the District Board, Local Board or Union Committee, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of such District Board, Local Board or Union Committee.
- (3) A member who has been removed from office under subsection (1) or clause (a) of sub-section (2) shall not be elected or re-elected as a member of the District Board, or appointed as a member of a Local Board, without the consent of the Local Government.

(Secs. 16-19.)

- (4) A member who has been removed from office under clause (b) of sub-section (2) shall not be elected or re-elected as a member of the District Board, or appointed as a member of a Local Board, within a period of three years from the date of his removal.]
- [1][16. When a salaried servant of Government who is a member of Vacation of a District Board or Local Board is granted leave for a period exceeding office by three months or is transferred from the district or subdivision in which servant of the District Board or Local Board has authority, he shall be deemed Government. to have vacated his office from the date of his departure on leave or transfer.]

[1][17. An elected member of a District Board or Local Board who Effect of vacation of ceases to be a member of one of the said Boards, shall thereupon cease office of also to be a member of the other.]

member of District Board or Local Board.

[1] [18. If a member of a District Board or Local Board, whether Casual vacancies. elected or appointed, ceases to be a member thereof by reason of his death, resignation, removal or otherwise, the vacancy so caused shall be filled by the election or appointment, as the case may be, of another member.]

Chairman and Vice-Chairman.

[1][2][19. (1) The members of a District Board at a meeting shall elect one from among their own number to be Chairman, provided that no salaried servant of Government shall vote in the election or be eligible for election.

(2) Such election shall take place within thirty days from the date of the publication of the names of the members in the Gazette under section 9, or, in the case of a vacancy due to any cause other

[8] [19. (1) Save as otherwise Election or provided in sub-section (2) a person of Chairman shall be appointed by the Local of District Government either by name or by Board. virtue of his office to be the Chairman of a District Board.

(2) The Local Government may, by notification[4], direct the members of a District Board to elect one from among their own number to be Chairman, and may, by like notification, withdraw any such

[1] See footnote [4] at page 524.

[2] Section 19 is in force in this form in the areas to which the Act applies, other

[4] Section 19 is in force in this form in the areas to which the Act applies, other than the Chota Nagpur Division.

[8] Section 19 is in force in this form in the Chota Nagpur Division. Vide notifications nos. 3674-P. and 3675-P., dated the 21st June, 1923, published in Part II of the Bihar and Orissa Gazette, dated the 27th June, 1923, pages 909 and 910.

[4] By notification no. 2250-P.R., dated the 1st August 1927 (published in the Bihar and Orissa Gazette, 1927, Part I, p. 391), the members of the Manbhum District Board have been directed to elect one of their number to be Chairman.

6 L. D.

(Sec. 20.)

than the expiry of the term of direction: provided that the tenure office of the Chairman, within of the office of a Chairman holding thirty days from the date of the office at the time of such withoccurrence of such vacancy.

(3) If the members of a District Board fail to elect a Chairman within the period prescribed by sub-section (2), the Local Government may appoint a person, not being a salaried servant of Government, to be Chairman.]

drawal shall not be affected thereby.

- (3) The election of a Chairman of a District Board in respect of which direction under subsection (2) is in force, shall take place within thirty days from the date of the publication of the names of the members in the Gazette under section 9, or, in the case of a vacancy due to any cause other than the expiry of the term of office of the Chairman, within thirty days from the date of the occurrence of such vacancy.
- (4) The Local Government may, notwithstanding such direction, appoint a person by name or by virtue of his office to be Chairman if the members fail to elect a Chairman within the period prescribed by sub-section (3) or if they pass a resolution at a meeting requesting the Local Government to appoint a Chairman: provided that no salaried servant of Government shall vote on such resolution.]

 $\lceil 3 \rceil \lceil 20 \rceil$ (1) The members of a Local Board at a meeting shall, unless they request the Local Government to appoint a Chairman under sub-section (4), elect one from among their own number to be Chairman.

Election or appointment of Chairman of Local Board.

[1][2][20. (1) The members of a Local Board at a meeting shall elect one from among their own number to be Chairman, provided that no salaried servant of Government shall vote in the election or be eligible for election.

See footnote [4] at page 524.
 Section 20 is in force in this form in the areas to which the Act applies, other

than the Chota Nagpur Division.

[3] Section 20 is in force in this form in the Chota Nagpur Division. Vide notifications nos. 3674-P. and 3675-P., dated the 21st June, 1923, published in Part II of the Bihar and Orissa Gazette, dated the 27th June, 1923, pages 909 and 910.

(Sec. 21.)

- (2) The election of a Chairman of a Local Board shall take place within thirty days from the date of the publication of the names of the members of the Local Board in the Gazette under sub-section (3) of section 10, or, in the case of a vacancy due to any cause other than the expiry of the term of office of the Chairman, within thirty days from the date of the occurrence of such vacancy.
- (3) The election of a Chairman under sub-section (1) shall be subject to the approval of the District Board. Pending the approval of the District Board, the elected Chairman shall exercise all the powers of a Chairman.
- (4) If the members of a Local Board fail to elect a Chairman within the aforesaid period of thirty days, the District Board may appoint a person, not being a salaried servant of Government, to be Chairman.

- (2) The election of a Chairman of a Local Board shall take place within thirty days from the date of the publication of the names of the members of the Local Board in the Gazette under sub-section (3) of section 10, or in the case of a vacancy due to any cause other than the expiry of the term of office of the Chairman, within thirty days from the date of the occurrence of such vacancy.
- (3) The election of a Chairman under sub-section (1) shall be subject to the approval of the District Board. Pending the approval of the District Board, the elected Chairman shall exercise all the powers of a Chairman.
- (4) The members of a Local Board at a meeting may pass a resolution requesting the Local Government to appoint a Chairman: provided that no salaried servant of Government shall vote on such resolution.
- (5) If the members of a Local Board fail to elect a Chairman within the period prescribed by subsection (2), or, if they request the Local Government to appoint a Chairman under sub-section (4), the Local Government, after ascertaining and considering the opinion of the District Board, may appoint a person either by name or by virtue of his office to be Chairman.]

[17[21. Notwithstanding anything contained in section 7 or sec-Status of tion 10, every Chairman of a District Board or Local Board appointed appointed under section 19 or section 20 shall, if he is not a member of the District Board or Local Board of which he has been appointed Chairman, from

(Secs. 22-25.)

the date of his appointment during the term of his office, enjoy all the rights and privileges and be subject to all the liabilities and disabilities of a member of such District Board or Local Board.

Election of Vice-Chairman of District and Local Boards.
Grant of leave to Chairman or Vice-Chairman.
Term of office of Chairman and Vice-

Chairman.

[1][22. Every District Board and every Local Board shall at a meeting elect one of its members to be Vice-Chairman.]

[1][23. The District Board or Local Board may grant leave of absence to its Chairman or Vice-Chairman for any period not exceeding three months in any one year.]

[1][2][24. The Chairman and Vice-Chairman of a District Board or Local Board shall continue to hold office until the next general election of members of the District Board, and for such further period as may elapse between the date of the general election and the first meeting of the newly constituted District Board or Local Board, as the case may be, held under the provisions of sub-section (2) of section 19 or of sub-section (2) of section 20, and they shall then vacate office.

[3][24. (1) A Chairman of a District Board appointed under subsection (1) of section 19 shall continue to hold office until a new Chairman is appointed.

(2) A Chairman of a District Board elected in pursuance of a direction under sub-section (2) of section 19, or appointed under subsection (4) of the said section, the Vice-Chairman of a District Board and the Chairman and the Vice-Chairman of a Local Board, shall continue to hold office until the next general election of the members of the District Board and for such further period as may elapse between the date of the general election and the first meeting of the newly constituted District Board or Local Board, as the case may be, and shall then vacate office.

[3][25. (1) On the vacation of office under sub-section (2) of section 24 of the Vice-Chairman of a District Board of which a Chairman is to

Meeting for election of Chairman and Vice-Chairman.

[1][2][25. (1) On the vacation of office of the Chairman and Vice-Chairman under section 24, the members present at the meeting

^[1] See footnote [4] at page 524.

^[2] Sections 24 and 25 are in force in this form in the areas to which the Act applies, other than the Chota Nagpur Division.

^[3] Sections 24 and 25 are in force in this form in the Chota Nagpur Division. Vide notifications nos. 3674-P. and 3675-P., dated the 21st June, 1923, published in Part II of the Bihar and Orissa Gazette, dated the 27th June, 1923, pages 909 and 910.

(Sec. 26.)

shall forthwith elect one of their own number, who is not himself a candidate for the post of Chairman or Vice-Chairman, to preside thereat.

- (2) The members shall then proceed to elect a Chairman and a Vice-Chairman.
- (3) If the members fail to elect a Chairman, the Chairman shall be deemed not to have vacated office till a new Chairman is appointed.

be appointed by the Local Government under sub-section (1) of section 19, the members present at the meeting shall elect a person to fill the vacancy.

- (2) On the vacation of office under sub-section (2) of section 24 of the Chairman of a District Board and the Chairman and Vice-Chairman of a Local Board the members of a District Board in respect of which a direction under sub-section (2) of section 19 is in force, and the members of the Local Board, as the case may be, present at the meeting, shall forthwith elect one of their own number, who is not himself a candidate for the post of Chairman or Vice-Chairman, to preside thereat.
- (3) The members shall then proceed-
 - (a) to elect, or request the Local Government to appoint, a Chairman, and
 - (b) to elect a Vice-Chairman.
- (4) If the members fail to elect, or request the Local Government to appoint, a Chairman, the Chairman shall be deemed not to have vacated office until a new Chairman is appointed.

[1][26. (1) An appointed Chairman of a District Board or Local Resignation of Chairman Board may resign in writing to the Local Government and on such or Viceresignation being accepted shall be deemed to have vacated office.

Chairman.

- (2) An elected Chairman of a District Board may resign in writing to the District Board.
- (3) An elected Chairman of a Local Board or a Vice-Chairman of a District Board or Local Board may resign in writing to the Chairman of the District Board, who shall forthwith lay such notice of resignation before the District Board.

(Secs. 27-29.)

(4) On a resignation under sub-section (2) or (3) being accepted by the District Board, the Chairman or Vice-Chairman of the District Board or Local Board, as the case may be, shall be deemed to have vacated office.

Removal of Chairman and Vice-Chairman.

[1][2][27. A Chairman or a Vice-Chairman of a District Board or removed from office by a resolution of the District Board or Local their votes at a meeting specially convened for the purpose.]

Vice-Chairman of a District Board Local Board may at any time be or Local Board may at any time be removed from office by a resolution of the District Board or Local Board, as the case may be, in Board, as the case may be, in favour of which not less than two-favour of which not less than twothirds of the whole number of the thirds of the whole number of the members of such Board have given members of such Board have given their votes at a meeting specially convened for the purpose.

[3] 27. An elected Chairman or a

Casnal Vacancies.

- [1] [28. (1) If the Chairman or Vice-Chairman of a District Board or Local Board is unable by reason of his death, resignation or removal to complete his full term of office, or if he ceases to be a member of the District Board or Local Board, as the case may be, or if the Chairman of a District Board or Local Board avails himself of leave under section 23, the vacancy so caused shall be filled by the election or appointment, as the case may be, of another person to the said office; and the person so elected or appointed shall fill such vacancy for the unexpired portion of the term for which such Chairman or Vice-Chairman would otherwise have continued in office or during the absence on leave of such Chairman, as the case may be.
- (2) Notwithstanding anything contained in section 22, if a Vice-Chairman of a District Board or Local Board avails himself of leave under section 23, the Chairman of the District Board or Local Board, as the case may be, shall appoint a member thereof to officiate as Vice-Chairman during the period of such leave. Such appointment shall be subject to the approval of the District Board.]

Incorporation of District Board.

[1] [29. Every District Board shall be a body corporate by the name of the District Board of the district by reference to which it is known, and shall have perpetual succession and a common seal, with power to acquire and hold property both movable and immovable and, subject to any rules made under this Act, to transfer any such property held by it, and to do all other things necessary for the purpose of the Act, and may sue and be sued in its corporate name.

^[1] See footnote [4] at page 524.
[2] Section 27 is in force in this form in the areas to which the Act applies, other than the Chota Nagpur Division.
[3] Section 27 is in force in this form in the Chota Nagpur Division. Vide notifications nos. 3674-P. and 3675-P., dated the 21st June, 1923, published in Part II of the Bihar and Orissa Gazette, dated the 27th June, 1923, pages 909 and 910.

(Secs. 29A-32.)

[1] [29A. No act of a District Board or Local Board shall be deemed Proceedings to be to be invalid only by reason of the existence of a vacancy in such Board.] invalidated

by casual vacancies.

Joint Committees.

30. A District Board may join with any other District Board or Joint Comwith any Municipal[2] or Cantonment[3] authority, or with more than one such Board, or Municipal or Cantonment authority, in constituting out of their respective bodies a Joint Committee for any purpose in which they are jointly interested, and in delegating to any such Joint Committee any power which might be exercised by either or any of the Boards or authorities concerned, and may from time to time frame rules as to the proceedings of any such Joint Committee, and as to the conduct of correspondence relating to the purpose for which the Joint Committee is constituted. [4]

Conduct of Business.

31. Minutes of the proceedings at each meeting of a District Board Record and or Local Board shall be drawn up and recorded in a book to be kept of proceedfor the purpose, and shall be signed by the Chairman of the meeting, ings. and shall be published in such manner as the [5] [Local Government] may from time to time direct, and shall at all reasonable times and without charge be open to the inspection of any person resident within, or owning or holding land within, the jurisdiction of such Board.

A copy of every resolution passed by a District Board at a meeting Resolutions shall, within three days from the date of the meeting, be forwarded to passed by District the Magistrate of the district for transmission to the Commissioner.

A copy of every resolution passed by a Local Board at a meeting or Local Board shall, within three days from the date of the meeting, be forwarded how to be to the District Board and to the Magistrate of the district.

[6] [32. Every District Board, subject to the control of the Local Power to Government, and every Local Board, with the sanction of the District make rules

[2] As to municipal authorities, see the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), in Vol. III of this Code.

(B. & O. Act 7 of 1922), in Vol. III of this Code.

[8] As to cantonment authorities, see the Cantonment Act, 1924 (2 of 1924), in General Acts, 1921-24, Ed. 1928, p. 16.

[4] For a similar provision applying to local authorities generally, see the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), s. 51, in Vol. III of this Code.

[5] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 2(3), in Vol. III of this Code.

[6] The portion in square brackets in section 32 was substituted for the original portion as amended by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 17(a), post, p. 791, by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 8(a), in Vol. III of this Vode. Code.

^[1] This section 29A was substituted for the original section by the Bihar and and affairs. Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 6, in Vol. III of this Code.

(Sec. 33.)

Board and subject to the control of the Local Government, shall make rules as to -

- (a) the time and place of its meetings, the business to be transacted at meetings and the manner in which notice of meetings shall be given;
- (b) the conduct of proceedings at meetings, the due record of all dissents and discussions, and the adjournment of meetings;
- (c) the custody of the common seal, and the purposes for which it shall be used:
 - (d) the division of duties amongst its members:
- (e) the powers to be exercised by the Chairman or Vice-Chairman. or by sub-committees or members to whom particular duties are assigned;
- (f) the persons by whom receipts shall be granted for money received under this Act:
- (g) the duties, appointment, [2] [leave, leave allowance and punishment (including suspension and removal), of the officers and servants of the Board; and
 - (h) other similar matters;

[3] and may, subject to the like control, and in the case of a Local Board subject also to the like sanction, from time to time repeal or alter such rules:

Provided that all rules made under this section, and all orders repealing or altering any such rules, shall be considered by the District Board at a meeting specially convened for the purpose, and be subject to the approval of not less than two-thirds of the number of members present at the meeting.

All such rules and orders as aforesaid shall be published in the official Gazette and in such other manner as the Local Government may direct; and so far as they are consistent with this Act, and with any rules made by the Local Government thereunder, shall upon such publication have the force of law.

Establishments.

District Board may appoint

33. Every District Board, subject to the provisions hereinafter contained, may from time to time determine and appoint the establish-

^[1] For a list of rules made under section 32 (amended by this section, including those which are kept in force by virtue of section 27, of the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

Rules and Orders, Volume 1, Part VI.
[2] These words in square brackets in section 32(g) were substituted for the words
"leave, suspension and removal," by the Bengal Local Self-Government (Amendment)
Act, 1908 (Ben. Act 5 of 1908), s. 17(b), post, p. 791.
[3] The paragraphs in square brackets in section 32 were substituted for the
original paragraphs as amended by the Bengal Local Self-Government (Amendment)
Act, 1908 (Ben. Act 5 of 1908), s. 17(c) and (d), post, p. 791, by the Bihar and Orissa
Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 8(b), in Vol. III of this Code.

(Sec. 34.)

ment to be employed by it, or by any Joint Committee constituted under establishments and section 30, or by [1] any Committee of the District Board, and may fix salaries. fix the pay of such establishment:

Provided-

- [3][(1) that the appointment of a District Engineer or any appointment the maximum pay of which amounts to three hundred rupees or more a month shall not be created or abolished without the sanction of the Local Government, and that any increase or reduction in the pay of any such appointment, or the increase of the maximum pay of a sanctioned appointment to an amount exceeding three hundred rupees a month, shall be subject to confirmation by the Local Government:
- (2) that the aggregate [8][pay] [4][**] in any one financial year of the establishment employed by any District Board for the purpose of heading D of Part III of this Act shall not, without the sanction of the [5][Local Government], exceed twenty per centum on the total amount available for expenditure by such Board upon public works during the financial year;
- (3) that every District Board shall conform to any rules made by the [5][Local Government] under this Act regarding the qualifications of candidates for employment;
- [6] [(4) that if by a direction under section 74, made after the commencement of the Bihar and Orissa Local Self-Government (Amendment) Act, 1923, any property which is vested in Government is placed under the control and administration of the District Board, every nomination to, and dismissal from, the appointment of a District Engineer shall be subject to confirmation by the Local Government.]
- [7] [Explanation.—In this section "pay" includes any special or personal pay and any allowance other than a travelling allowance.
- **34.** (Rules regarding leave of absence and absentee allowances to officers.) Rep. by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 2.

proviso by *ibid*, section 9(b).
[3] The word "pay" was substituted for the word "salaries" by *ibid*, section 9(c).

[4] The words "and allowances", repealed by *ibid*, section 9(c), are omitted.

The words "Local Government" were substituted for the words "Lieutenant-Governor " by ibid, section 9(d).

[6] This proviso (4) in square brackets in section 33 was inserted by ibid, section

[7] The explanation was inserted by ibid, section 9(f).

B. & O. Act 1 of 1923.

^[1] These words in square brackets in section 33 were substituted for the words "an Education Committee referred to in section 65B, and may fix the salaries to be paid to such establishment" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 9(a), in Vol. III of this Code.

[2] This proviso (1) in square brackets in section 33 was substituted for the original

(Secs. 35-36.)

Pensions and gratui-ties to be paid out of the District Fund.

[1][35. A District Board may, from time to time, [2][**] subject to the control of the [3] [Local Government], make rules [4] for pensions and gratuities to be granted and paid out of the District Fund to its establishment, and for the grant and payment therefrom of extraordinary pensions and gratuities to the families of deceased employés; and may, [5][**] subject to the like control, repeal, add to, or alter such rules.]

Provident Fund.

- [6] [35A. A District Board may, from time to time, [2][**] subject to the control of the [3][Local Government], make rules—
 - (a) for the creation and management of a Provident Fund for [7][the establishment of the District Board or of any local authority subordinate to such Board];
 - (b) for compelling members of [8][any such establishment] to make contributions to such Fund;
 - (c) for supplementing such contributions by grants from the District Fund; and
- (d) for the payment of moneys out of such Provident Fund; and may, [5][**] subject to the like control, repeal, add to, or alter such rules.]

Union Committee establishment and fix salaries.

[9][36. Every Union Committee may, from time to time, determine may appoint and appoint the establishment to be employed by it, and may fix the salaries to be paid to such establishment:

^[1] This section 35 was substituted for the original section 35 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 19, post, p. 792.

^[2] The words "with the sanction of the Commissioner and" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 10(1), in Vol. III of this Code, are omitted.

^[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 10(1).

^[4] For a list of rules made under section 35, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

^[5] The words "with the like sanction, and" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 10(1), printed in Vol. III of this Code, are omitted.

^{. [6]} This section 35A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 20, post, p. 792.

^[7] These words in square brackets in section 35A were substituted for the words "its several establishments" by ibid, section 10(2).

^[8] The words "any such establishment" were substituted for the words "its establishments" by ibid, section 10(2).

^[9] Sections 36 to 44 are repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See section 2(1) of and Schedule I to that Act, in Vol. III of this Code.

(Secs. 37-41.)

Provided that no appointment, the monthly salary of which amounts to ten rupees or more, shall be created without the consent of [1] the District Board.

CHAPTER II.

Union Committees.

[2] 37. No provision contained in this Chapter shall apply to any operation of district, or part of a district, unless and until it has been expressly Chapter. extended thereto, by notification[8], by the [4][Local Government.]

[2]38. The [4][Local Government] may, by order[5] in writing, Formation constitute any village or group of villages into a Union; and may prescribe for such Union the number of members of which the Union Committee shall consist.

Such number shall not be less than five or more than nine.

It shall be lawful for the [4][Local Government] from time to time to vary or annul such order.

[2]39. Save as is hereinafter provided, such number shall be elected Election of from among the residents of the Union in accordance with rules made members of by the [4][Local Government] under this Act, and shall constitute the Committees. Union Committee of such Union.

[2]40. If the electors of any Union fail to elect the full number of Appointmembers prescribed for the Committee of such Union, the Commissioner ment on may appoint the remainder.

failure to elect.

[2]41. Notwithstanding anything in this Act contained, it shall be Appointlawful for the [4] [Local Government] to direct, [6] by order in writing, ment in for reasons to be stated in such order, that any Union Committee shall of election. consist, either wholly or in part, of members appointed by the Commissioner.

^[1] The words "the District Board" were substituted for the words "the Local Board to which the Union Committee creating such appointment is subordinate" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 21, post, p. 792.

^[2] See footnote [9] at page 538, ante.

^[3] For a list of notifications issued under section 37, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

^[4] The words "Local Government" were substituted for the words "Lieutenant-(Jovernor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

^[5] For a list of orders made under section 38, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

^[6] For a list of orders made under section 41, see ibid.

(Secs. 41A-44.)

Chairman of Union

- [1] [41A. (1) Every Union Committee shall, from time to time, elect Committee. one of its members to be Chairman of the Committee.
 - (2) The election of any person to be Chairman of a Union Committee shall be subject to the approval of the District Board.
 - (3) If a Chairman of a Union Committee be not elected within the period prescribed in this behalf by rule made under clause (c) of section 138 of this Act, the District Board shall appoint a member of the Committee to be Chairman.

Term of office of members.

[2]42. The term of office of the members of a Union Committee shall be two years from the date of their election or appointment, but shall include any period which may elapse between the expiration of the said two years and the date of the next subsequent election or appointment not being an election or appointment under the next succeeding section.

At the expiration of such term such members may be re-elected or re-appointed.

Filling casnal vacancies.

[2]43. When the place of an elected or appointed member of a Union Committee becomes vacant by the resignation or death of such member, a new member shall be elected or appointed, in the manner hereinbefore provided, and shall hold office until the person whose place he fills would regularly have gone out of office, and shall then go out of office, but may be re-elected or re-appointed:

Provided that no act of the Committee or of its officers, or of the Committee in meeting, shall be deemed to be invalid by reason only that the number of the Committee at the time of the performance of such act was less than the prescribed number.

Joint Union Committees.

[2]44. Any Union Committee may from time to time with the consent of [3][the District Board], join with any other Union Committee or Committees in constituting out of their respective bodies a Joint Union Committee for any purpose in which they are jointly interested, and in delegating to any such Joint Union Committee any power which might be exercised by either or any of the Union Committees; and may from time to time frame rules as to the proceedings of any such Joint Committee and as to the conduct of correspondence relating to the purpose for which the Joint Union Committee is constituted.

^[1] This section 41A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 22, post, p. 792 and is repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See footnote [9] on page 538, ante.

^[2] See footnote [9] at page 538, ante.

^[8] The words "the District Board" were substituted for the words "the local Board to which it is subordinate as hereinafter provided "by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 23, post, p. 792.

(Secs. 45-47.)

It shall be lawful for the [1][District Board] to associate not more than two of its members with any Joint Union Committee constituted under this section.

PART II.

FINANCE.

GENERAL.

45. The [2] [Local Government] may, by notification, [3] direct that Local all or any portion of the funds vested in any local body existing in Government [4][any district in which this Act is in force] shall be vested in any that funds local authority constituted under this Act, immediately upon such local of existing authority being constituted.

local bodies shall be vested in new local authorities.

CHAPTER I.

46. A District Board, on or before the day prescribed in the rules District made by the [2][Local Government] under this Act, shall hold a Board to meeting for the purpose of fixing the rate at which the [5][local cess] local cess shall be levied in the district during the ensuing cess year;

annually.

Provided that the rate at which the [5] [local cess] is levied $\lceil 6 \rceil \lceil * * * \rceil$ shall not be reduced without the sanction of the $\lceil 2 \rceil \lceil \text{Local}$ Government.

[7][46A. (1) The Local Government may prescribe by rules made Local under this Act-

(a) the minimum closing balance to be maintained by a District minimum Board: and

(b) the statements, accounts and reports to be submitted to the statements, Local Government].

Government to prescribe closing balance,

[8][47. (1) Every District Board shall cause to be prepared and Budget laid before it, at a meeting to be held in every year before such date

"such district" by the Amending Act, 1903 (1 of 1903), Schedule II, in Vol. I of this Code.
[5] The words "local cess" were substituted for the word "road-cess" by the

Bihar and Orissa Local Self-Government (Amendment) Act, 1932 (B. & O. Act 3 of

1932), s. 2, in Vol. III of this Code.
[6] The words "when this Act comes into force in such district", repealed by ibid, are omitted.

[7] This section 46A was inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section II, in Vol. III of this Code.

[8] These sections 47—49 were substituted for the original sections by *ibid*, section

12.

^[1] The words "the District Board" were substituted for the words "the Local Board," by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 23, post, p. 792.

[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

[3] For list of notifications issued under section 45, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

[4] These words in square brackets in section 45 were substituted for the words "such district" by the Amending Act. 1903 (1 of 1903). Schedule II in Vol I

(Secs. 48-50.)

as may be prescribed by the Local Government by rules made under this Act, a budget estimate of the income and expenditure of the said Board for the ensuing financial year.

- (2) The budget estimate shall contain such particulars as may be prescribed in the aforesaid rules.
- (3) The budget estimate after it has been approved by the District Board shall be submitted to the Local Government which shall examine it with a view to seeing that—
 - (a) the estimate of income is reasonable and proper;
 - (b) provision has been made for the minimum closing balance prescribed under section 46A;
 - (c) provision has been made for the payment of any sums specified in clauses Firstly, Secondly, Thirdly and Fourthly of section 53; and
 - (d) provision has been made for the expenditure of any grants given by Government for a specific purpose for such purpose.]

Power of Local Government, if it finds the budget estimate defective, erroneous or improper in respect of any of the particulars as to budget specified in section 47, shall return it to the District Board for such alterations and modifications as the Local Government may deem necessary, and the District Board shall make such alterations and modifications in the budget estimate and re-submit it to the Local Government for its approval.]

How details [1][49. When a budget estimate has been finally approved by the of budget estimate may be altered.

Local Government, the District Board shall not incur expenditure under any of the heads of the budget estimate in excess of the amount provided under that head without making provision for such excess by variation and alteration of the budget, and, if the variation or alteration affects any provision made in accordance with clause (b), (c) or (d) of sub-section (3) of section 47, shall obtain the approval of the Local

Government thereto.

District
Boards may of any law relating to the raising of loans by local authorities for the raise loans and may form a sinking fund.

50. It shall be lawful for a District Board, subject to the provisions and to the raising of loans by local authorities for the purpose of carrying out any of the provisions of this Act, and to guarantee the payment of interest on such loans, and to form a sinking fund:

[2][Provided that no loan shall be raised for the purpose of constructing and maintaining a railway or tramway under the provisions of section 80, unless it is authorized by a resolution which has been

[1] See footnote [8] at page 541, ante.
[2] This proviso was added to section 50 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 25, post, p. 792.

(Secs. 51-52.)

passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted.

51. Every Local Board shall submit to the District Board annually, Estimates on or before such date as the District Board may appoint, a statement and audit of accounts of the requirements and an estimate of the probable expenditure of of Local the Local Board for the ensuing financial year, and shall submit, as Boards. often as the District Board may require, accounts of its receipts and expenditure.

The District Board may approve such estimate or may make such alterations therein as it thinks fit.

The District Board shall make arrangements [1][* *] for the examination and audit of accounts submitted to it under this section, and may direct the publication of such accounts.

CHAPTER II.

THE DISTRICT FUND.

52. There shall be formed for each district a fund to be called the Constitution "District Fund", and there shall be placed to the credit thereof—

[2](1) the proceeds of the local cess;

 $\lceil 3 \rceil \lceil (1a)$ all sums received under any loan raised under section 50];

 $\lceil 4 \rceil$ (2) all sums levied within $\lceil 5 \rceil$ (2) all sums levied within the the district as fines, penalties or district as fines, penalties or otherotherwise under this Act; wise under this Act, except when levied by a panchayat appointed under the Bihar and Orissa Village B. & O. Act

3 of 1922.

 $\lceil 6 \rceil \rceil \lceil (3)$ all sums directed by notification under section 31 of the Cattle-trespass Act, 1871, [7] to be placed to the credit of the Fund];

Administration Act, 1922;

[1] The words "subject to the approval of the Commissioner" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 13, in Vol. III of this Code, are omitted.

[2] This clause was substituted for the original clause (1) by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), section 22(a), in Vol.

III of this Code.

[3] This clause (1a) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 26(1), post, p. 792.

[4] Clause (2) is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 5 of 1922), is not in force.

[5] Clause (2) is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 5 of 1922), is in force. See section 2(1) of and Schedule 1 to that Act, in Vol. III of this Code.

[6] This clause (3) was substituted for the original clause (3) by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 26(2), post. p. 792.

[7] Printed in General Acts, 1834-72, Ed. 1928, p. 338.

(4) all receipts in respect of public ferries within or on the boundary of the district which have been placed under the management of the District Board under the provisions of the Bengal Ferries Act, 1885[1]; Den. Act, 1885.

- (5) all receipts in respect of any schools, hospitals, dispensaries, railways, tramways or other buildings, institutions or works, which may have been constructed by, vested in or placed under the control and administration of a District Board under Part III of this Act;
- [2][(5a) all receipts accruing within the district from tolls or leases under Part III, heading D(1), of this Act];
- (6) all sums which may be allotted to the District Board from the Provincial Revenues by the [3][Local Government] for any of the purposes mentioned in Part III of this Act, or for any other purpose;
- (7) all sums contributed to the District Board by local bodies or private persons.

[4][The proceeds of the local cess shall be placed to the credit of the District Fund under such separate heads as the Local Government may from time to time determine.]

District Fund to be vested in Board.

Application

of District

Fund.

The District Fund shall be vested in the District Board, and the balance standing to the credit of the Fund shall be kept in such custody as the [8] [Local Government] from time to time directs.

53. The District Fund shall [5][* * *] be applicable to the following objects, and in the following order:-

[6][Firstly.—To the payment of the cost of establishments entertained and expenses incurred by the Collector under section 91 of Ben. Act 9 the Cess Act, 1880].[7]

[6] [Secondly.-To, the indemnification of the Collector with the sanction of the Commissioner, for any other costs or damages which he may have incurred or for which he may have become liable, in the course of the proceedings for the assessment and collection of the local cess under the Cess Act, 1880.][7]

Ben. Act 9 of 1880.

[1] As to the management of public ferries by District Boards, see the Bengal Ferries Act, 1885 (Ben. Act 1 of 1885), section 35, ante, p. 513.

[2] This clause (5a) was inserted by the Bengal Local Self-Government (Amend-

ment) Act, 1908 (Ben. Act 5 of 1908), section 26(3), post, p. 792.

[3] The words "Local Government" were substituted for the words "Lieutenant-

[3] The words "Local Government" were snoshbled for the words Electronary by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 [4] This clause was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 26(4), and the present clause was substituted for the original clause by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), section 22(b), in Vol. III of this Code.

[5] The words and figures "subject to the provisions of section 109 of the Cess Act, 1880, as amended by this Act", repealed by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), section 23(1)(a), in Vol. III of this Code,

[6] These clauses Firstly and Secondly were inserted and the subsequent clauses re-numbered by ibid, section 23(1) (b).

[7] Printed ante, p. 369.

Thirdly.—To the payment of any sums which the District Board may be liable to pay as interest upon loans raised by it under section 50 for the purposes of this Act, and to the formation of a sinking fund. when required.

Fourthly.—To the payment of any sums which the District Board may under this Act from time to time have undertaken to pay as interest on capital expended on any works which may directly improve the means of communication within the district or between such district and other districts.

Fifthly.—To the payment of such percentage as the [1][Local Government may from time to time direct towards the cost of audit and towards the cost of establishments in any office of account or in any treasury:

Provided that the total amount which any District Board may be required to pay on this account shall not in any year exceed two per centum on the whole amount of the District Fund for such year.

Sixthly.—To the payment of the salaries of the establishments employed by the District Board for the purposes of this Act, and of any pensions and gratuities granted under section 3 and section 35 [2][and of any grants made for supplementing contributions by members of such establishments to any Provident Fund created under section 35A7, and to the payment to the Government of such percentage as the [1][Local Government] may from time to time direct on the salaries of such establishments in consideration of the Government undertaking to pay the leave and pension allowances of such establishments.

[3] [Seventhly.—To the payment of—

- (a) expenses incurred by the District Board in—
 - (i) the construction, repair and maintenance of any works which may become vested in, or be placed under the control and administration of, such Board under Part III of this Act;
 - (ii) the acquisition, by purchase or otherwise, of offices for the use of the District Board, or of a house and land for the residence of the District Engineer [4] [or any officer or servant of the District Board or Local Board], or the

^[1] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 14(a), in Vol. III of this Code.

[2] These words in square brackets in this clause were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 27(2), post, p. 793.

^[3] This clause was substituted for the original clause by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 27(3), post, p. 793.

^[4] These words in square brackets were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 14(b), in Vol. III of this Code.
6 L.D.

acquisition of land for, and the construction of, such offices or house; and

- (iii) the performance of duties imposed, and the exercise of powers conferred, by this Act;
- (b) advances granted to members of the establishments of the District Board for the purpose of enabling them to acquire or construct residences for themselves:
- (c) any contribution made by the District Board under Part III of this Act; [1][*]
- $\lceil 2 \rceil (d)$ any sums assigned by the District Board to a Local Board or District Board to a Local Board or Union Committee under this Act; to a Union Board constituted under

 $\lceil 3 \rceil (d)$ any sums assigned by the Bihar and Orissa Village Administration Act, 1922;

B. & O. Act 3 of 1922.

- [4] [(e) subject to such rules as the Local Government may prescribe. advances granted to members of the establishments of the District Board or Local Board for the purchase of means of conveyance for the performance of their duties; and
- (f) any loans granted to Union Committees constituted under this Act or to Union Boards constituted under the Bihar and Orissa Village Administration Act, 1922, for the performance of duties imposed on B. & O. Act them by this or any other Act.]

Eighthly.—To the payment, at such rates as the [5][Local Government] may direct[6]—

 $[^7][(a)$

[1] The word "and" at the end of this sub-clause, repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 14(c), printed in Vol. III of this Code, is omitted.

[2] This sub-clause (d) is in force in this form in areas in which Part IV of the

Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is not

[3] This sub-clause (d) is in force in this form in areas in which l'art IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See section 2(1) of and Schedule I to that Act, in Vol. III of this Code.

[4] These clauses (e) and (f) were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 14(d), in Vol. III

of this Code.

[5] The words "Local Government" were substituted for the words "Lieutenant-

[5] The words "Local Government" were substituted for the words Licetenant-Governor" by ibid, section 14(a).

[6] For a list of orders under clause Eighthly, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

[7] Sub-clauses (a) to (d) were substituted for the words "of the travelling expenses incurred by members of the District Board in attending meetings of the Board or meetings of a Joint Committee" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 27(4), post, p. 793 and sub-clause (a), repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (R & O Act 1 of 1923), section 14(e), in Vol. III of this Code, is omitted. (B. & O. Act 1 of 1923), section 14(e), in Vol. III of this Code, is omitted.

- [1][(b) of travelling expenses incurred by members of the District Board or any Local Board [2][or of any Committee appointed by the District Board] in attending meetings of the District Board or Local Board or meetings of a Committee or Joint Committee; and
- [1](c) in such cases, if any, as the [3][Local Government] may direct, of travelling expenses incurred by members of the District Board or any Local Board in performing journeys for carrying out other objects of this Act; and
- [1](d) of the expenses of any of the poorer inhabitants of the district for journeys to and from [4][and for their subsistence at] any hospital established in any part of British India for the treatment of special diseases.]

Ninthly.—To the payment of expenses incurred by the District Board under section 80 of this Act.

Tenthly.—To investment in any local debenture loans issued by the Government of India or by any municipal authority or local authority, for the construction of public works which may directly improve the means of communication within the district, or between such district and other districts;

Provided-

- (1) that, [5][except as is provided in section 99A], no sum shall be expended from the District Fund
 - in the construction of any channel for the purposes of irrigation; or
 - for the purposes of drainage connected with any irrigation works in charge of public officers; or
 - for the improvement or maintenance of any water-channel on which tolls are levied, when no portion of the proceeds of such tolls is paid into the District Fund;
- (2) that no part of the District Fund shall be applied to the construction, repair or maintenance of any road within any municipality

^[1] See footnote [7] on p. 546, ante.

^[2] The words in square brackets were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 14(f), printed in Vol. III of this Code.

^[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by *ibid*, section 14(a).

^[4] The words "and for their subsistence at" were inserted by ibid, section 14(y).

^[5] These words in square brackets were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 27(5), post, p. 793.

(Secs. 53A-54.)

which has been, or may hereafter be, constituted under the [1] [Bihar B. & O. and Orissa Municipal Act, 1922], unless such road shall have been Act 7 of 1922. expressly excluded from the operation of the said Act under section $\lceil 1 \rceil \lceil 59 \rceil$ thereof;

[2][(3) that any loans granted by the District Board to Union Committees constituted under this Act, and Union Boards constituted under the Bihar and Orissa Village Administration Act, 1922,[3] shall B. & O. Act be subject to such conditions as regards the rates of interest, periods and 3 of 1922. method of repayment as the Local Government may prescribe];

[2][(4) that, if in the opinion of the Local Government the expenditure of the District Board on any of the objects referred to in this section is insufficient, the Local Government may prescribe the minimum expenditure to be incurred from time to time by the District Board on the said object.

Temporary deviations from provisions relating to crediting or application of District Fund.

[4][**53A.** If deviation from the provisions of this Act, or of or accidental any rule made hereunder [5] [relating to the crediting of the local cess to the District Fund or the application thereof as part of such fund], is shown to the satisfaction of the [6] [Local Government] to have been of temporary duration or of an accidental character, [6][it] may cause a declaration to be made to that effect; and such deviation shall thereupon be deemed to be valid, notwithstanding any of the provisions hereinbefore referred to.]

Accounts of District Fund how to be kept and published.

54. Account-books of the District Fund shall be kept by an officer to be appointed by the District Board.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter, and published in such manner as the [7] [Local Government] directs, and any person resident

^[1] The words and figures "Bihar and Orissa Municipal Act, 1922" were substituted for the words and figures "Bengal Municipal Act, 1884" and the figures "59", were substituted for the figures "30" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 14(h), in Vol. III of this Code.

^[2] The original proviso (3) which was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 27(6), was repealed by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act I of 1916), section 23(2), and new provisos (3) and (4) were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 14(i), in Vol. III of this Code.

Code.

[3] Printed in Vol. III of this Code.

[4] This section 53A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 28, post, p. 793.

[5] The words in square brackets were substituted for the words "or of section 109 of the Cess Act, 1880, as amended by this Act, relating to the crediting or application of the balance of the District Road Fund mentioned in clause (1) of section 52 of this Act," by the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act I of 1916), section 24, in Vol. III of this Code.

[6] The words "Local Government" were substituted for the words "Lieutenant-Governor" and the word "it" for the word "he" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 15, in Vol.

Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 15, in Vol.

III of this Code.
[7] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 2(3).

(Secs. 55-56.)

in or owing or holding land in the district may at all reasonable times inspect any such account without payment of a fee.

A similar account showing the income of the District Fund under each head of receipt, the charges of establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the Fund remaining unspent at the end of the year, shall be prepared for each financial year as soon as possible after its close, and shall be open to inspection as aforesaid.

55. Every District Board shall appoint a Finance Committee Finance consisting of so many members as it thinks fit.

It shall be the duty of such Committee to prepare the statements, Its duties. estimates and accounts required for submission under [1][sections 46A and 47, and generally to superintend all matters connected with the

finances and accounts of the District Board.

The Finance Committee shall at all times, when required so to do, produce its accounts for audit by any officer who may be appointed by the [2][Local Government] in that behalf.

CHAPTER III.[3]

THE UNION FUND.

[3] 56. There shall be formed for each Union a fund to be called the Constitution of Union "Union Fund," and there shall be placed to the credit thereof—

Fund.

[4][(1) all sums directed by notification under section 31 of the Cattle-trespass Act, 1871, [5] to be placed to the credit of the Fund;

(2) all sums assigned thereto by the [6] [Local Government] or District Board, whether as a contribution towards the cost of making village roads or otherwise;

(3) all other sums received by the Union Committee in the execution of this Act.

The Union Fund shall be vested in the Union Committee, and the Union Fund balance standing to the credit of the Fund shall be kept in such custody in Union as the [6][Local Government] from time to time directs.

1 of 1871.

^[1] The words, figures and letter "sections 46A and" were substituted for the 1-1 the words, agures and letter "sections 40A and" were substituted for the word "section" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 16, in Vol. III of this Code.

[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 16.

^[3] This Chapter III (sections 56 to 58) is repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act. 1922 (B. & O. Act 3 of 1922) is in force. See section 2(1) of and Schedule I to that Act, in Vol. III of this Code.

[4] This clause (1) was substituted for the original clause (1) by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 29,

Printed in General Acts, 1834-72, Ed. 1928, p. 338.
 The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

(Secs. 57-59.)

Application of Union Fund.

[4]57. The Union Fund shall be applicable to the following objects, and in the following order:-

[2][(1) to the payment of interest on, and the repayment of, any loans granted by the District Board;

2 to the payment of establishments employed, and expenses incurred, by the Union Committee for the purposes of this Act;

[2] (3) to the payment of the expenses incurred by the Union Committee in respect of the duties imposed, and powers conferred, upon it under Part III of this Act, and of any expenses that may be incurred through its default in carrying out any of such duties.

Accounts of how to be kept and published.

[1]58. Account-books of the Union Fund shall be kept by an officer Union Fund to be appointed by the Union Committee.

An account showing the receipts and expenditure during the quarter, arranged under the proper heads and duly balanced, shall be prepared immediately after the close of each quarter and published in such manner as the [3][Local Government] directs and any person resident in, or owning or holding land in, the Union may at all reasonable times inspect any such account without payment of a fee.

A similar account showing the income of the Union Fund under each head of receipt, the charges of establishment, the works undertaken, the sums expended on each work, and the balance, if any, of the Fund remaining unspent at the end of the year, shall be prepared for each financial year as soon as possible after its close, and shall be open to inspection as aforesaid.

Copies of the quarterly and yearly accounts shall be submitted to [4] [the District Board].

PART III.—DUTIES AND POWERS OF LOCAL AUTHORITIES.

CHAPTER I .- DUTIES AND POWERS OF DISTRICT BOARDS.

Operations of provisions included under headings A to E.

59. The provisions included under the headings A to [5][E] (both inclusive) of this Chapter shall be in force as regards every District Board, unless and until the [3][Local Government] shall otherwise direct.

[1] See footnote [3] on p. 549, ante.
[2] This clause (1) was inserted and the original clauses (1) and (2) renumbered

[2] Ihis clause (1) was inserted and the original clauses (1) and (2) renumbered as (2) and (3) respectively by the Bihar and Orissa Local Self-Government Act, 1923 (B. & O. Act 1 of 1923), section 17, in Vol. III of this Code.

[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 2(3).

[4] The words "the District Board" in section 58 were substituted for the words "the Local Board to which such Union Committee is subordinate" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 30, post, p. 793.

[5] This letter "E" in this section 59 was substituted for the letter "D" by ibid, section 31, post, p. 793.

3 of 1922.

(Secs. 60-62.)

60. No provision included under the headings [1][F] to I (both Operation of inclusive) of this Chapter shall apply to any District Board, unless and provisions included until it has been expressly extended thereto by notification[2] by the under [8] [Local Government].

headings F to I.

A.—Pounds.

[4] [61. Every District Board shall perform such functions as may Powers of be [5] transferred to it by notification under section 31 of the Cattle- District trespass Act, 1871.][6] 1 of 1871.

Boards in respect of pounds.

B.—Education.

any rules [7]**62.** Subject to made by the [8][Local Government] under this Act, every District Board shall be charged with, and be responsible for, the B. & O. Act maintenance and management of all primary and middle schools under public management within the district, the construction and repair of all buildings connected therewith, the appointment (subject to the provisions of section 33) of all masters and assistant masters thereof, and the payment of the salaries of such masters and assistant masters:

rules Primary [8]62. Subject to any made by the [3][Local Govern-and middle schools ment] under this Act, and to the under provisions of the Bihar and Orissa manage-AdministrationVillageDistrict Board 1922.everv shall be charged with, and be responsible for, the maintenance and management of all primary and middle schools under public management within the district, the construction and repair of all buildings connected therewith, the appointment (subject to the provisions of section 33) of all masters and assistant masters thereof, and the payment of the salaries of such masters and assistant masters:

Act. ment.

^[1] This letter "F" in this section 60 was substituted for the letter "E" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 32,

post, p. 794.
[2] For a list of notifications issued under section 60, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

^[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

^[4] This section 61 was substituted for the original section 61 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 33, post, p. 794.

^[5] For a list of orders transferring functions under the Cattle-trespass Act to District Boards, see entries under Act I of 1871, section 31(a) in the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part IV.

^[6] Printed in General Acts, 1834-72, Ed. 1928, p. 338.

^[7] Section 62 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922) is not in force.

^[8] Section 62 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922) is in force. See section 2(1) of and Schedule I to that Act, in Vol. III of this Code.

(Secs. 63-64.)

Provided that nothing contained in this section shall be held to apply to schools for the education of Europeans and Eurasians.

Other schools.

- [1] [63. The District Board may, subject to any rules made by the [2][Local Government] under this Act,—
- (a) with its own consent, be charged with, and made responsible for, the maintenance and management of any other schools or class of schools within the district; or
- (b) make grants-in-aid of any such schools, whether the same be under public or private management].

High English schools.

64. It shall be lawful for the [8][Local Government] to declare[4] that the maintenance and management of any high English school under public management, situated within a town which has been or may hereafter be constituted a municipality under the [5] [Bihar and B. & O. Act Orissa Municipal Act, 1922], [6] shall be entrusted to a Joint Committee, 7 of 1922. consisting partly of members delegated by the Commissioners of such municipality and partly of members delegated by such District Boards as may be named in the order:

[7] [Provided that no order shall be made under this section except with the consent of each of the local authorities and the municipal authority affected thereby.

Every order issued under this section shall specify the number of members to be delegated, and the proportion of the cost of maintenance of the school to be provided by each of the local authorities and the municipal authority named therein.

Every Joint Committee appointed under this section shall, in respect of any such school, have the same powers and be subject to the same liabilities as are by this heading conferred and imposed on District Boards.

(B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 18(a).

[4] For an order made under section 64, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

[6] Printed in Vol. III of this Code.
[7] This proviso was inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 18(b).

^[1] This section 63 was substituted for the original section 63 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 34, post, p. 794.
[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923

^[5] The words and figures "Bihar and Orissa Municipal Act, 1922" were substituted for the words and figures "Bengal Municipal Act, 1884" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1823 (B. & O. Act 1 of 1923), section

(Secs. 64A-65.)

[1] [64A. The District Board may, subject to any rules made by Provision, the [2][Local Government] under this Act,—

maintenance and managehostels.

- (a) provide buildings to be used as students' hostels in connection ment of with schools for the maintenance and management of which the Board students' is responsible under section 62 or section 63, and maintain and manage such hostels, [3][*]
- (b) make grants-in-aid of any school referred to in section 63 or section 64, or any other school, college or educational institution, for the purpose of providing buildings to be used as students' hostels in connection with such school, college or institution, or for the purpose of maintaining and managing such hostels, [4][or]
- $\lceil 5 \rceil \lceil (c) \rceil$ establish scholarships for the furtherance of technical or any other special form of education.
- 65. It shall be lawful for the [6] [Local Government] from time Transfer of to time to transfer to a District Board such funds as [6][it] may deem funds by Government necessary for expenditure on—

to District Board.

- [7][(a) the improvement of any schools or class of schools within the district under private management; or
- (b) the maintenance or improvement of any schools or class of schools maintained and managed by the District Board; or
- (c) the provision of buildings to be used as students' hostels in connection with any school referred to in section 64, or in clause (a) or clause (b) of this section, or any other school, college or educational institution, and the maintenance and management of such hostels.

And, subject to any rules made by the [6][Local Government] under this Act, the Board shall be charged with, and be responsible for, the proper distribution of such funds.

^[1] This section 64A was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben Act 5 of 1908), section 35, post, p. 794.

^[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 19(i), in Vol. III of this Code.

^[3] The word " or " at the end of clause (a), repealed by ibid, section 19(ii), is

^[4] The word " or " at the end of clause (b) was inserted by ibid, section 19(iii).

^[5] This new clause (c) was inserted by ibid, section 19(iv).

^[6] The words "Local Government" were substituted for the words "Lieutenant-Governor" and the word "it" for the word "he" by ibid, section 20.

^[7] These clauses (a) to (c) in this section 65 were substituted for the words "the improvement of primary schools within the district under private management " by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 36, post, p. 794.

(Secs. 65A-66.)

Site of students' hostels.

[17] 65A. The hostels referred to in sections 64A and 65 may be situated either within the area directly subject to the authority of the District Board or within any place or town lying within that area in which the [2] [Bihar and Orissa Municipal Act, 1922] [3] [is for the time B. & O. Act being in force.

Constitution and functions of Education Committee.

[4] [65B. (1) Every District Board shall appoint an Education Committee consisting of-

- (a) the District Inspector of Schools;
- (b) not more than four members of the District Board; and
- (c) not more than three persons who may be of either sex and who are not members of the District Board, but who in the opinion of the District Board possess special qualifications for serving on the Committee:

Provided that at least one member of the Committee shall be a Muhammadan.

- (2) The Education Committee shall, subject to the control of the District Board and to any rules made under this Act,—
 - (i) superintend all matters connected with the finances, accounts, maintenance and management of all schools maintained by the District Board; and
 - (ii) determine the conditions on which grants may be made in aid of other schools.
- (3) Nothing contained in the foregoing sub-sections shall apply to schools referred to in section 64].

C.—Medical.

District Board to have control and administration of public charitable dispensaries or hospitals within the district.

66. It shall be lawful for the [5][Local Government] from time to time to direct, by notification, [6] that any public charitable dispensary or hospital within a district shall be under the control and administration of the District Board.

And the District Board shall thereupon be charged with the control and administration thereof, and the construction and repair of all buildings connected therewith.

[1] This section 65A was inserted by the Bengal Local Self-Government (Amendment)

[4] The original section 65B was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 37, post, p. 794, and the present section has been substituted for that section by the Bihar and Orissa Local Self-

Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 22.

[5] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3).

[6] For a list of notifications issued under section 66, see the Bihar and Orissa.

Local Statutory Rules and Orders, Volume I, Part VI.

Act, 1908 (Ben. Act 5 of 1908), section 37, nost, p. 794.

[2] The words and figures "Bihar and Orissa Municipal Act, 1922" were substituted for the words and figures "Bengal Municipal Act, 1884" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 2: in Vol. III of this Code.
[3] Printed in Vol. III of this Code.

(Secs. 67-67A.)

The [1][Local Government] may at any time vary or annul any order made under this section.

67. A District Board may provide, for the use of the inhabitants District of the district, dispensaries, hospitals or temporary places for the establish reception of the sick, and for that purpose may-

maintain

itself build such dispensaries, hospitals or places of reception; or dispensaries contract for the use of any such dispensary, hospital or place of reception, hospitals. or of any part thereof; or

enter into any agreement with any person having the management of any hospital for the reception of the sick inhabitants of the district. on payment of such annual or other sum as may be agreed on.

[2] A District Board may also provide for—

- (a) the training and employment of compounders, midwives and veterinary practitioners; and
- (b) the promotion of free vaccination.

[3] [67A. (1) The Local Government may, by notification, [4] direct Manage. that the maintenance and management of any hospital or dispensary in hospitals any municipality which has been, or may hereafter be, constituted under and the Bihar and Orissa Municipal Act, 1922, shall be entrusted to a Joint by Joint Committee, consisting partly of persons appointed by the Commissioners Committee of such municipality, and partly of persons appointed by the District Board of the district in which such municipality is situated, and shall specify in such notification the proportion of the cost of maintenance of the said hospital or dispensary to be provided by the Commissioners of the said municipality and by the said District Board respectively:

Provided that no direction shall be made under this section except with the consent of the Commissioners of the said municipality and the said District Board.

(2) Subject to such rules as may be made by the Local Government in this behalf, such Joint Committee shall in respect of such hospital or dispensary have the same powers and be subject to the same liabilities as are conferred and imposed by any law for the time being in force on the Commissioners of the said municipality and the said District Board.

B. & O. Act 7 of 1922.

^[1] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923

⁽B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

[2] This clause in section 67 was added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 38, post, p. 794.

[3] This section 67A was inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 23, in Vol. III of this Code.

[4] For a list of notifications under s. 67A, see the B. & O. Local Statutory Rules and Orders Vol. I. Pt. VI. and Orders, Vol. I, Pt. VI.

(Secs. 68-72.)

Two or more establish dispensaries.

District Board may contribute to cost of maintenance of dispensary or hospital outside district. Power to provide temporary supply of medicine and medical assistance.

District

to rules

Board to conform

made by Local Government. Constitution and functions of Public

Works

Committee.

68. Two or more District Boards may [1][* * *] combine in Boards may providing a common dispensary, hospital or place for the reception of combine to the sick, and [1][**] fix the proportion of the cost thereof to be borne by them respectively.

69. A District Board may [2][**] contribute such annual or other sum as may be agreed on towards the cost of the maintenance of any dispensary or hospital which is situated outside the district, but is

habitually used by the inhabitants of the district.

- 70. A District Board may [3][**] provide, or contract with any person to provide, a temporary supply of medicine and medical assistance for the poorer inhabitants of the district.
- 71. Every District Board, in exercising the powers vested in it by [4] [sections 66 to 70 (both inclusive)], shall conform to any rules made by the [4][Local Government] under this Act.

D.—Public Works.

- [5] [72. (1) Every District Board shall appoint a Public Works Committee consisting of—
 - (a) not more than four members of the District Board; and
- (b) not more than three persons who are not members of the District Board, but who in the opinion of the District Board possess special qualifications for serving on the Committee.
- (2) It shall be the duty of the Public Works Committee to examine and check estimates and bills in respect of public works under the control and administration of the District Board, and to perform such other duties and exercise such powers as may, in accordance with rules

^[1] The words "with the approval of the Commissioner or Commissioners" and the words "with the like approval" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 24(1), in Vol. III of this Code, are omitted.

^[2] The words "with the approval of the Commissioner" repealed by ibid, section 24(2), are omitted.

^[3] The words "with the approval of the Commissioner" repealed by ibid, section 24(3), are omitted.

^[4] The words, figures and brackets "sections 66 to 70 (both inclusive)" were substituted for the words "the five last preceding sections", and the words "Local Government" for the words "Lieutenant-Governore" by ibid, section 25.

^[5] The original section 72 was repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 2, post, p. 789 and the present section 72 was inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 26.

of 1880.

(Secs. 73-76.)

made under this Act, be imposed and conferred upon it by the said Board.

- (3) All the proceedings of the Public Works Committee shall be subject to the confirmation of the District Board.
- 73. From and after the establishment of a District Board in any Transfer to district, all roads, bridges, channels, buildings and other property, Boards of movable or immovable, held by, or under the control and administration roads and of, the District Road Committee or any Branch Committee in such other property of Ben. Act 9 district for the purposes of the Cess Act, 1880, [1] shall, for the purposes District of this Act, [2][but subject to the provisions of Chapter III of Part III Road (Committee. thereof], be under the control and administration of such District Board.

[3][

74. It shall be lawful for the [4][Local Government] from time Government to time to direct [5] that any road, bridge, channel, building or other other place property, movable or immovable, which is vested in Government and property which is situated within a district shall, with the consent of the District Under District Board of such district, and subject to such exceptions and conditions Boards. as the [4] [Local Government] may make and impose, be placed under the control and administration of the District Board for the purposes of this Act;

and thereupon such road, bridge, channel, building or other property shall be under the control and administration of the District Board, subject to all exceptions and conditions so made and imposed and to all charges and liabilities affecting the same.

75. Every road, building or other work constructed by a District Works Board from the District Fund shall be vested in the District Board by constructed by District which it has been constructed.

76. A District Board may agree with the person in whom the District property in any road, bridge, tank, ghat, well, channel or drain is Board may, with vested to take over the property therein, and after such agreement may consent of

Board to be vested in it.

owners, take over and repair works.

^[1] Printed ante, p. 369.

^[2] The words in square brackets in section 73 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 39, post, p. 794, and are repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922) is in force. See section 2(1) of and Schedule I to that Act, in Vol. III of this Code.

^[3] The proviso to section 73 repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 2, post, p. 789 is omitted.

^[4] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 2(3), in Vol. III of this Code.

^[5] For a list of orders made under section 74, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

(Secs. 77-801)

declare, by notice in writing put up thereon or near thereto, that such road, bridge, tank, ghat, well, channel or drain has been transferred to the District Board.

Thereupon the property therein shall be vested in the District Board, and such road, bridge, tank, ghat, well, channel or drain shall thenceforth be repaired and maintained out of the District Fund.

District Board to submit public works.

District Board to repair and maintain works.

turn,

divert,

or close road.

Miscella-

neons improve-

ments.

77. Every District Board shall, at such times and in such form as the [1][Local Government] may direct, submit a schedule of all public schedules of works subject to the control of, or vested in, such District Board.

> 78. It shall be the duty of every District Board to provide for the repair and maintenance of roads, bridges, water-channels and other works for directly improving communications which have been taken charge of by the District Board under this Act, or towards which it may have agreed to contribute; and for the construction of new roads, bridges, water-channels and other means of communication.

[2][784. The District Board may [8][**] turn, divert, discontinue Power to or permanently close any road which is under the control and administration of, or is vested in, the District Board. discontinue'

> 79. It shall be lawful for a District Board to take measures for. or to contribute towards-

> the construction, repair and maintenance of any works which may directly improve the means of communication within the district or between the district and other districts;

the planting of trees by the roadside; and

the construction and maintenance of any means and appliances for improving the supply of drinking water, or for providing or improving drainage.

District Board may construct and maintain railways or tramways.

80. It shall be lawful for a District Board, with the sanction of the [4][Local Government], either singly or in combination with any municipal authority or any other local authority, to construct and maintain within, or partly within and partly without, its own district, a railway or tramway under the provisions of any law[5] for governing

ment) Act, 1908 (Ben. Act 5 of 1908), section 40, post, p. 794.
[3] The words "with the sanction of the Commissioner" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 28, are omitted.

[4] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 29.

[5] As to railways see the Indian Railways Act, 1890 (9 of 1890) in General Acts, 1887-97, Ed. 1928, p. 115: as to tramways see the Bengal Tramways Act, 1883 (Ben. Act 3 of 1883), ante, p. 489.

^[1] The words "Local Government" were substituted for the word "Commissioner" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 27, in Volume III of this Code.
[2] This section 78A was inserted by the Bengal Local Self-Government (Amendment) Act 1908 (Box Act 5 of 1908)

(Secs. 81-85.)

the construction of railways or tramways for the time being in force in [1] [Bihar and Orissa], and to do all lawful acts which may be necessary in that behalf.

- 81. It shall be lawful for a District Board, with the sanction of the District [2] [Local Government], to subscribe to any debenture loan raised by subscribe to the Government of India or by any municipal authority or local authority debenture for the construction or maintenance of any railway or tramway which, construct in the opinion of such District Board, is likely to be of direct benefit to and the district.
- 82. It shall be lawful for the District Board, with the sanction of District the [3][Governor-General in Council], from time to time to guarantee guarantee the payment from the District Fund of such sums as it shall think fit interest on as interest on capital expended on any railways, tramways, or other expended on works which may directly improve the means of communication within works of the district or between the district and other districts:

[4][Provided that no application for the said sanction shall be made, in the case of a railway or tramway, unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the District Board have voted.]

83. It shall be lawful for a District Board from time to time to District undertake, on behalf of the Government, and upon such conditions as Board may undertake may be agreed upon, the construction, repair and maintenance of any construcpublic building or other work which is the property of the Government: tion, repair and main-

Provided that the cost of such construction, repair or maintenance tenance of Government shall be defrayed by the Government.

84: Subject to the provisions of section 33 and to any rules made District by the [2] [Local Government] under this Act, every District Board appoint shall appoint a properly qualified person to be its Engineer, and such Engineer and so many subordinate officers under his orders as it may think subordinecessary.

85. It shall be the duty of the District Engineer to prepare all Duties of plans, designs, specifications and estimates which the District Board Engineer. may require, to carry out such works as it may direct, and to conform

loan to maintain railways or tranıways. communica-

buildings.

^[1] The words "Bihar and Orissa" were substituted for the word "Bengal" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 29, in Vol. III of this Code.

^[2] The words "Local Government" were substituted for the words "Lieutenant-Clovernor" by ibid, section 2(3).

^[3] The words "Governor-General in Council" in section 82 were substituted for the words "Lieutenant-Governor" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 41(1), post, p. 794.

^[4] This proviso was added to section 82 by ibid, section 41(2), post, p. 794.

(Secs. 86-86A.)

generally to all rules that may be made by the District Board under section 32 or by the [1][Local Government] under section 138.

Power of Boards under sections 78 and 79 to

86. The powers of the District Board under sections 78 and 79 shall be subject to any rules made by the [1][Local Government] under this Act regarding the submission for approval of plans, designs, specifications and estimates;

be subject to rules for plans.

[2][and the power of the District Board to make any contribution approval of under section 79 shall be subject to any rules, made by the [1][Local Government] under this Act prescribing conditions precedent to the making of such contribution.]

[3] [D(1).—Tolls on Bridges.]

Power of District Board to establish toll-bars and levy tolls.

[3] [86A. The District Board, with the sanction of the [4] [Local Government], may establish a toll-bar-

> (i) on any bridge in the district which has, after the date[6] of the commencement of the Bengal Local Self-Government (Amendment) Act, 1908, belen constructed or purchased Ben. Act 5 out of the District Fund, or to the cost of the construction of 1908. or purchase of which contribution has, after the said date, been made out of the District Fund; or

- (ii) on any road-way or foot-way of a railway bridge which has, after the said date, at the instance of the District Board and out of the District Fund, been so constructed or widened as to allow the passage of persons, vehicles or animals; or
- (iii) at any place in the district, adjacent to any bridge referred to in clause (i) or clause (ii), at which tolls may conveniently be levied:

[6] and may with the like sanction levy at such toll-bar a toll on vehicles and animals passing over such bridge, road-way or foot-way, for

^[1] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

[2] This clause was added to section 86 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 42, post, p. 794.

[8] This heading and sections 86 At 86M were inserted by the Bengal Local Self-Covernment (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 42, post, p. 794.

Covernment (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 43, post, p. 794.

[4] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 30.

^[5] The 28th October, 1908.

^[6] These provisions in square brackets were substituted for the original provisions by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 30, in Vol. III of this Code.

(Secs. 86B-86C.)

the purpose of recovering, during a period which may extend to twenty vears .--

- (a) the amount spent or contributed by the District Board for the purpose of constructing, purchasing or widening such bridge, road-way or foot-way;
- (b) the amount of the loss to the District Board of receipts in respect of any public ferry referred to in clause (4) of section 52, when such loss results from the construction or widening of such bridge, road-way or foot-way;
- (c) interest on such amounts at the rate of five per centum per annum: and
- (d) the capitalized value of the estimated cost to the District Board of maintaining such bridge, road-way or foot-way and of renewing it, if it requires periodical renewal:

Provided that-

- (1) no toll-bar shall be established nor tolls levied on or in respect of any bridge, road-way or foot-way, the cost or estimated cost of which, as indicated in clauses (a), (b) and (d), is less than twenty-five thousand rupees;
- (2) if, on the expiry of the said period of twenty years, the said amounts, interest and capitalized value have not been fully recovered, the Local Government may empower the District Board to levy tolls for such further period as the Local Government may determine.]
- [1] [86B. The District Board may grant a lease, for any period not Lease of exceeding three years, of any toll-bar established under section 86A toll-bar. of this Act.)

[1] [86C. When the District Boards of two adjacent districts, Procedure having jointly constructed, purchased or contributed towards the cost District of the construction or widening of a bridge, road-way or foot-way, have Boards received sanction under section 86A of this Act to the establishment contributed of a toll-bar, the tolls shall be levied or granted in lease by such District towards Board as the [2] [Local Government] may, in [2] [its] order according bridge, etc. sanction, direct; and the proceeds of such tolls, or of the lease thereof, shall be adjusted between the two District Boards according to rules made in this behalf by the [2][Local Government.]

^[1] See footnote [3] at page 550.
[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" and the word "its" for the word "his" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 31, in Vol. III of this Code. - 6 L. D. 36

(Secs. 86D-86H.)

Exemptions.

- [1][2][86D. The following vehicles and animals shall be exempted from payment of tolls at any toll-bar established under section 86A, namely:---
- (a) vehicles and animals used for the conveyance of police and other public officers and District Board officers when such officers are travelling on duty, or for the transport of property belonging to, or in the custody of, such officers;
- (b) conservancy carts and other vehicles and animals belonging to the District Board; and
- (c) any other class of vehicles and animals that may be exempted by order of the District Board.

Rates of tolls.

- [2] [86E. (1) When it has been determined that tolls shall be levied at any toll-bar established under section 86A of this Act, the District Board shall make and publish an order specifying the rates at which the tolls shall be levied.
- (2) Such rates shall be subject to the sanction of the [8] [Local Government and may from time to time be varied with the like sanction.]

Table of tolls to be hung up.

- [2] [86F. (1) A table of such tolls, legibly printed or written in the vernacular of the district, shall be hung up in some conspicuous position near every such toll-bar, so as to be easily readable by all persons required to pay the tolls.
- (2) In default of compliance with sub-section (1) of this section, the toll-collector, or the lessee of the toll-bar, as the case may be, shall be liable to fine which may extend to fifty rupees, and to a further fine which may extend to ten rupees for each day after the first during which the default continues.]

Power to compound for tolls.

[2] [86G. The District Board, or the lessee of any toll-bar may compound with any person for a certain sum to be paid by such person [4][**] for any vehicles or animals kept by him, in lieu of the rates specified under section 86E of this Act.]

Power of toll-collector or lessee in case of refusal to pay toll.

[2][86H. Any toll-collector or lessee of a toll-bar established under section 86A of this Act may refuse to allow[5] [any vehicle or animal] to pass through the toll-bar until the proper toll has been paid.

^[1] This section 86D was substituted for the original section 86D by the Bihar

^[1] This section 86D was substituted for the original section 86D by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 32 printed in Vol. III of this Code.

[2] See footnote [3] at page 560.

[3] The words "Local Government" were substituted for the word "Commissioner" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 33, in Vol. III of this Code.

[4] The words "for himself, or" repealed by ibid, section 34, are omitted.

[5] The words "any vehicle or animal" were substituted for the words "any person" by ibid, section 35.

(Secs. 86J-87.)

[1][86J. Whoever, having rendered himself liable to the payment Penalty for of toll, refuses to pay the toll, shall be liable to fine which may extend pay toll.

to fifty rupees.

[1][86K. If resistance is offered to any person authorized under this Police-Chapter to collect tolls, any police-officer whom he may call to his officers to assist. aid shall be bound to assist him; and such police-officer shall, for that purpose, have the same powers as he has in the exercise of his ordinary police duties.

[1][86L. If any person authorized under this Chapter to collect Penalty for tolls demands or takes any higher tolls than the tolls authorized under taking unauthorized this Chapter, he shall be liable to fine which may extend to fifty rupees, tolls. and, in default of payment, to imprisonment for a term which may extend to one month.]

[1] [86M. (1) When a toll-bar has been established and tolls have District been levied, under section 86A of this Act, in respect of any bridge, Board to publish road-way or foot-way, the District Board shall, at the end of each expenses, financial year, publish, by causing to be posted up at their office, an etc., of toll-bare. abstract account showing-

 $\lceil 2 \rceil \rceil \lceil (a)$ the amount spent or contributed by the District Board for the purpose of constructing, purchasing or widening such bridge, roadway or foot-way];

- $\lceil 2 \rceil \rceil (b)$ the amount of the loss to the District Board of receipts in respect of any public ferry referred to in clause (4) of section 52, when such loss results from the construction or widening of such bridge, roadway or foot-way?;
 - (c) the amount of interest which has accrued due on such expenses;
- (d) the capitalized value of the estimated cost to the District Board of maintaining the bridge, road-way or foot-way, and of renewing it, if it requires periodical renewal; and
- (e) the amount which has been received from the profits of the said toll-bar since its establishment.
- (2) As soon as such expenses, interest and capitalized value have been recovered as aforesaid, such toll-bar shall be removed, and tolls shall no longer be levied in respect of such bridge, road-way or foot-way.]

E.—Sanitation.

87. It shall be the duty of every District Board, subject to any District rules made by the [3][Local Government] under this Act, to provide, Board to provide for so tar as may be possible, for the proper sanitation of its district, and sanitation.

^[1] See footnote [3] at page 560.

^[2] These clauses (a) and (b) of sub-section (1) of section 86M were substituted for the original clauses (a) and (b) by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 36, in Vol. III of this Code.

^[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 2(3).

(Secs. 88-89.)

to incur such expenses or undertake such liabilities as may be necessary in that behalf.

General powers for supplying district with may-

water-

supply.

- 88. A District Board may [1][***] provide any place within its district with a proper and sufficient supply of water, and for this purpose
- (1) construct, repair and maintain water-works, wells or tanks, and do any other necessary acts;
- (2) take on lease or hire any water-works and purchase any waterworks, or any water or right to take or convey water, either within or without its district; and

(3) contract with any person for a supply of water.

[2] [88A. A District Board may, with the sanction of the [3] [Local Power to contribute Government], contribute such annual or other sum as may be agreed towards upon towards the cost of cost of municipal

(a) the construction, repair and maintenance, under the provisions B. & O. Act of the [8] [Bihar and Orissa Municipal Act, 1922], [4] of 7 of 1922. water-works, wells or tanks within the district, or

(b) taking measures under the said Act for the prevention of plague in the district:

Provided that no application for such sanction shall be made unless it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the total number of members of the District Board have voted.

Public streams. channels. watercourses. tanks, reservoirs, wells to be under control of District Board.

[5]89. All streams, channels, water-courses, tanks, reservoirs, of the Bihar and Orissa Village springs and wells situated within Administration Act 1922, [4] the district, and not being private streams, channels, water-courses, 1922. property or under the control of any tanks, reservoirs, springs and wells springs and officer of the Government, shall, situated within the district, and for the purposes of this Act, be not being private property or under

[6]89. Subject to the provisions

[1] The words "with the approval of, and subject to such limits of cost as shall be imposed by, the Commissioner" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 37, in Vol. III of this Code, are cmitted.

[2] This section 88A was inserted by the Bengal Local Self-Government (Amend-

ment) Act, 1908 (Ben. Act 5 of 1908), section 44, post, p. 795.

[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" and the words and figures "Bihar and Orissa Municipal Act, 1922" for the words and figures "Bengal Municipal Act, 1884" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923). section 38 in Vol. III of this Code.

 [4] Printed in Vol. III of this Code.
 [5] Section 89 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is not in force. [6] Section 89 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See section 2 (1) of and schedule I to that Act in Vol. III of this Code.

(Secs. 90-91A.)

under the control and administra- the control of any officer of the tion of the District Board.

Government, shall, for the purposes of this Act, be under the control and administration of the District Board.

90. The District Board may, by an order duly published at such District places and in such manner as it may deem fit, set apart convenient Board may tanks, parts of rivers, streams or channels situated within the district, tanks, and not being private property or under the control of any officer of parts of the Government, for the supply of water for drinking and for culinary streams or purposes; and from the date of publication of such order, such tanks, channels for drinking and parts of rivers, streams or channels shall be held to be public springs culinary or reservoirs.

[1][91. (1) Every District Board shall appoint a Sanitation Constitution Committee consisting of—

and functions of

(a) the Civil Surgeon of the district;

Sanitation Committee.

- (b) not more than six members of the District Board: and
- (c) not more than four persons who may be of either sex and who are not members of the District Board, but who in the opinion of the District Board possess special qualifications for serving on the Committee.
- (2) The Sanitation Committee shall initiate and supervise all works connected with the sanitation of the district and shall exercise such powers as may be delegated to it by the District Board in accordance with rules made under this Act.
- (3) All the proceedings of the Sanitation Committee shall be subject to the confirmation of the District Board.
- [2] [91A. The District Board shall appoint a Health Officer and may Appointappoint such number of additional or assistant Health Officers as it ment of may consider necessary:

Health Officers,

Provided that the Local Government may exempt any District etc. Board or class of District Boards from the application of this section:

Provided also that if at any time the Local Government is satisfied that the district or any part thereof is visited by, or threatened with, an outbreak of any dangerous epidemic disease, and is of opinion that the number of Health Officers employed by the District Board is insufficient, the Local Government may direct the said Board to appoint such number of additional or assistant Health Officers as the Local Government deems necessary.]

^[1] This section 91 was substituted for section 91 as inserted by the Bengal Local Self-Government (Amendment) Act, 1908, by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 39, in Vol. III of this Code.

^[2] Sections 91A and 91B were inserted by ibid, section 40.

of 1880,

(Secs. 91B-96.)

Constitution and functions of Public Health Board.

[1] [91B. (1) The Local Government may, by notification, constitute a Public Health Board for Bihar and Orissa and may appoint, either by name or by official designation, such persons as it may deem fit to be members thereof.

(2) The said Board shall, when so required, advise the Local Government regarding any schemes for sanitation and for the improvement of the public health that may be framed by a local authority, and shall perform such other duties and exercise such powers as may be assigned to it by rules made by the Local Government under this or any other Act for the time being in force.]

F.—Vaccination.

District Board to have supervision of vaccinators within their districts.

92. Every District Board shall, within its district be charged with the appointment, payment, management and supervision of all public vaccinators.

District Board to appoint Inspectors of Vaccination.

93. Every District Board shall appoint a properly qualified person to be Inspector of Vaccination within its district, and shall, subject to the provisions of section 33, fix the salary to be paid to such person.

Every Inspector of Vaccination appointed under this section shall, within the district, exercise the powers and perform the duties assigned to the Superintendent of Vaccination under the Bengal Vaccination Ben. Act 5 of 1880. Act, 1880.[2]

District Board to have powers of Magistrate in district to which the Vaccination Act extends. Commissioner to make rules for guidance of District

94. In every district to which the Bengal Vaccination Act, 1880[2] Ben. Act 5 has been, or may hereafter be, extended, the District Board shall have of 1880. the powers of the Magistrate of the district under section 25 of the said Act.

95. The Commissioner may, with the sanction of the [3][Local Government], make rules consistent with this Act, and with the Bengal Vaccination Act, 1880,[2] for the guidance of every District Ben. Act 5 Board in the exercise of the powers conferred under the three last of 1880. preceding sections, and may from time to time, with the like sanction, repeal or alter such rules.

Act to be read with the Bengal Vaccination Act.

Boards.

96. The four last preceding sections, so far as is consistent with the tenor thereof, shall be read with, and form a part of, the Bengal Vaccination Act, 1880.[2] Ben. Act 5

See footnote [2] on page 565.
 Printed ante, p. 305.
 The words "Local Government" were substituted for the words "Lieutenant 1997. Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), Sec. 2(3), in Vol. III of this Code.

(Secs. 97-99A.)

G.—Census.

97. It shall be lawful for the Commissioner, with the sanction of Commisthe [1][Local Government], at any time to require a District Board direct to take an account of the number of persons who, at the time District of taking such account, shall be within the district of such District Board to Board:

census.

Provided that no part of the cost incurred in taking such account shall be charged upon, or be defrayed out of, the District Fund.

98. Every District Board which shall be required to take an account Powers for under the last preceding section shall, in taking such account, conform census. to any rules made by the [1][Local Government] under this Act, and to the provisions of any Act for the time being in force for regulating the taking of a census.

H.—Famine [2] [and Distress.]

99. It shall be lawful for a District Board [3][***] to take such District Board may measures as it thinks fit for the relief of famine [4] [or serious distress] take relief within its district, and for that purpose to—

in case of famine or

- (1) open and maintain such relief works as may be necessary;
- (2) open and maintain such temporary hospitals, poor-houses, distress. orphanages and places for the gratuitous distribution of food as may be necessary;
- (3) employ such extra medical or other assistance as may be necessary;
- [5][(4) distribute such gratuitous relief, in the form of doles of money or food, as may be necessary.

[6] [99A. It shall be lawful for a District Board [7][**] to incur Irrigation expenditure on any local irrigation work[8] [or the construction or relief of maintenance of an embankment], which may appear to it to be necessary famine or

[1] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.
[2] The words "and Distress" in this heading over section 99 were substituted for the word "Relief" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 46(1), post, p. 795.

[3] The words "subject to such limit of expenditure as may be prescribed by the Commissioner" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (R & O. Act 1 of 1923) section 41(1) are emitted

Act, 1925 (B. & O. Act 1 of 1925), section 41(1), are omitted.

[4] The words "or serious distress" in section 99 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 46(2), post, p. 795.

[5] This clause (4) was added to section 99 by ibid, section 46(3).

[7] The words "with the sanction of the Commissioner" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 41(2)(a), are omitted.

[8] The words "or the construction or maintenance of an embankment," were inserted by ibid, section 41(2)(b).

(Sec. 100.)

for the purpose of preventing, or mitigating the effects of, famine or scarcity within its district:

Provided that no such expenditure shall be incurred unless such irrigation work, [1] [construction or maintenance] has been sanctioned by the $\lceil 2 \rceil \lceil \text{Local Government} \rceil$ as a relief work in accordance with rules made under this Act.

1.—Miscellancous.

Miscellaneous powers of District Board.

100. It shall be lawful for a District Board[3][**] [4] [subject to such rules and restrictions as the [5][Local Government] may, from time to time, prescribe under this Act, to-

Staging bungalows and sernis.

(1) establish and maintain, at such places within its district as it thinks fit, staging bungalows and serais for the use of travellers, and charge such fees for the use of such bungalows and serais as it thinks fit:

Rewards for destruction of noxious

(2) offer rewards[7][**] for the destruction of noxious animals within the district:

Fairs and exhibitions.

animals.

(3) hold, within [8][the] district, from time to time, fairs and exhibitions of cattle, country-produce and agricultural implements, or local manufactures, and incur such expenditure and charge such fees in connection therewith [9][as it thinks fit];

Veterinary

[10][(3a) establish and maintain veterinary dispensaries for the dispensaries. reception and treatment of horses, cattle and other animals, and charge such fees for the use of such dispensaries[9][as it thinks fit];

> [1] The words " construction or maintenance" were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 41(2)(c), in Vol. III of this Code.
>
> [2] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 41(2)(d).
>
> [3] The words "with the approval of the Commissioner, and" repealed by ibid,

section 42(a), are omitted.

section 42(2), are omitted.

[4] These words in square brackets were substituted for the words "subject to any rules made by the Lieutenant-Governor" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 48(1), post, p. 795.

[5] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), sec. 42(b).

[6] The following proviso repealed by ibid, see 42(c), is omitted:—

"Provided that such fees shall in no case exceed the amount prescribed by the Commissioner"

Commissioner.'

[7] The words "upon such scale as may be approved by the Commissioner"

repealed by *ibid*, section 42(d), are omitted.

[8] The word "the" in section 100(3) was substituted for the word "its" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 48(2), post, p. 795.

[9] The words "as it thinks fit" in clauses (3) and (3a) were substituted for the words "as may from time to time be approved by the Commissioner" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 42(e), in Vol. III of this Code.
[10] These clauses (3a) to (3d) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 48(3), post, p. 795.

(Secs. 101-103.)

[1][(3b) appoint and pay qualified persons to prevent and treat Treatment of diseases diseases of horses, cattle and other animals]; of animals.

[1][(3c) provide for the improvement of the breed of horses, cattle Breeding of animals.

or asses, and for the breeding of mules];

[1] [(3d) make grants in aid of measures for improving agriculture Grants-inor for carrying out any of the objects specified in clause (3a) or clause agricultural (3c); and

andveterinary improvements.

(4) undertake and carry out any other local work likely to promote Works not the health, comfort or convenience of the public, and not otherwise otherwise provided provided for by this Act.

CHAPTER II.

DUTIES AND POWERS OF LOCAL BOARDS.

101. The [2] [Local Government], or, subject to [2] [its] control, a Duties of District Board, may direct that, within the area subject to the authority Board. of a Local Board, any matter placed under the control and administration of the District Board under this Act shall be wholly or partly transferred to the control and administration of the Local Board, with adequate funds for the purposes of such control and administration.

A Local Board, as the agent of, and subject to the control of, the District Board, shall, so far as the funds at its disposal permit, make due provision for all matters transferred to its control and administration under this section.

It shall be the duty of the District Board to enforce the responsibility imposed on a Local Board by this section.

102. Except as otherwise provided by this Act, a Local Board shall Limits on not incur expenses, or undertake liabilities, to any amount exceeding expenditure of Local the limit imposed by the District Board.

103. [8][**] It shall be the duty of the Local Board to procure Returns by and submit, in such form as the District Board may prescribe, all Board. such reports, returns and statistics as the District Board may from time to time require.

^[1] See footnote [10] at p. 568 ante.

^[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" and the word "its" for the word "his" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 43, in Vol. III of this Code.

^[3] The words "A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and " repealed by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 2. printed post, p. 789, are omitted.

(Secs. 104-108.)

CHAPTER III.[1]

DUTIES AND POWERS OF UNION COMMITTEES.

Union
Committee
to be
subordinate to
District
Board.

Union Committee to submit reports, estimates and accounts to District Board.

- 104. A Union Committee, as the agent of, and subject to the control of, the [2][District Board], shall, within the Union, have the control and administration of, and be responsible for, all matters specified in this Chapter, except such of those matters as the [2][District Board] may think fit to take under its direct control and administration.
- 105. Every Union Committee shall submit annually to the [8][District Board] on or before such date as the [8][District Board] may appoint, [4][an estimate of the probable receipts and expenditure of the Committee under each head of account] for the ensuing financial year, and an account of its receipts and expenditure for the past financial year; and shall also submit any other reports which the [8][District Board] may from time to time require.
- [⁵][Every estimate submitted under this section shall be subject to the sanction of the District Board, who may, before sanctioning any estimate, modify it as they may think fit.]

Limits on expenditure of Union Committee. 106. A Union Committee shall not incur expenses, or undertake liabilities to any amount exceeding the limit imposed by the [*][District Board.]

Union
Committee
to send
schedule
of roads and
bridges to
District
Board.

107. Every Union Committee shall, within such time as the [*][District Board] may direct, forward to such [*][District Board] a schedule of all village-roads [*][and bridges thereon] within the Union.

Such schedule shall state the length and width of the roads, the number, description and dimensions of bridges, and such other particulars as the [3][District Board] may require.

Village roads and bridges placed under_ control and administration of Union Committee.

108. All village-roads [7][and bridges thereon] within a Union, and the stones and other materials thereof, and also all erections, materials,

^[1] This Chapter is repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See section 2(1) of and Schedule I to the Act, in Vol. III of this Code.

^[2] The words "District Board" in section 104 were substituted for the words "Local Board" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 49, post, p. 795.

^[3] The words "District Board" in sections 105, 106 and 107 were substituted for the words "Local Board" by ibid, section 50(1), post, p. 795.

^[4] These words in square brackets in section 105 were substituted for the words "an estimate of the probable expenditure of the Committee" by *ibid*, section 50(2).

^[5] This clause was added to section 105 by ibid, section 50(3).

^[6] The words "and bridges thereon" in section 107 were inserted by *ibid*, section 50(4).

^[7] The words "and bridges thereon" in section 108 were inserted by *ibid*, section 51(1).

(Secs. 109-113.)

implements and other things provided for such roads [1][and bridges], shall be placed under the control and administration of the Union Committee.

109. A Union Committee shall, so far as the Union Fund permits, Mainfrom time to time cause the village-roads [2][and bridges thereon] to repair of be maintained and repaired, and may do all things necessary for such villagepurpose, and may-

roads and bridges.

- (a) lay out and make new village-roads;
- (b) build and construct new bridges;
- (c) turn, divert, discontinue or stop up any village-road [8][or bridge thereon]; and

(d) widen, open, enlarge or otherwise improve any such road [3] [or bridge thereon.]

110. The [4] [District Board] may, with the consent of a Union District Committee, delegate to such Committee the management of so much Board may delegate of any road under the management of the [5][District Board or of a manage-Local Board] as may be situated within such Union; and such Union ment of Committee shall thereupon do all things necessary for the maintenance of district and repair of the portion of road so assigned to it, and shall be roads to Union Com responsible to the [4][District Board] in that behalf.

mittee.

[6] [111. Every Union Committee shall perform such functions as Pounds. may be transferred to it by notification under section 31 of the Cattletrespass Act, 1871.]

I of 1871.

112. Subject to any rules made by the [7] [Local Government] Primary under this Act, every Union Committee shall be charged with, and schools. be responsible for, the maintenance and management of all primary schools within the Union, the appointment (subject to section 36) of the gurus of such schools, and the transmission to such gurus of any rewards that may be granted by the District Board or Local Board. Dispen

113. Subject to any rules made by the [7] [Local Government] saries. under this Act, a Union Committee may, with its own consent, be charged with, and made responsible for, the maintenance, management and visiting of any dispensary within the Union.

[2] The words "and bridges thereon" in section 109 were inserted by *ibid*, section 51(1), *post*, p. 796.
[3] The words "or bridge thereon" in clauses (c) and (d) of section 109 were

inserted by ibid, section 51(3).
[4] The words "District Board" in section 110 were substituted for the words

"Local Board" by *ibid*, section 52(a), *post*, p. 796.

[5] The words "District Board or of a Local Board" were substituted for the words "Local Board" by *ibid*, section 52(b), *post*, p. 796.

[6] This section 111 was substituted for the original section 111 by *ibid*, section

53, post, p. 796.
[7] The words "Local Government' were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), in Vol. III of this Code.

^[1] The words "and bridges" in section 108 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 51(2), printed post, p. 796.

(Secs. 114-116.)

Registration of births and deaths.

Duties of Union Committee as to sanitation, conservancy and drainage.

[1] [114. A Union Committee shall, if required to do so by the Magistrate of the district, provide for the registration of births and deaths [2] within the Union, and shall submit such returns thereof as the said Magistrate may direct.]

[3] [115. Every Union Committee shall, subject to the control of the District Board, and in accordance with rules made by the [4] [Local Government] under this Act.—

- (1) provide, as far as possible, for the sanitation and conservancy of the Union and the prevention of [5] [epidemic diseases and public nuisances therein;
- (2) make special arrangements for the sanitation and conservancy of fairs and melas held within the Union:
- (3) have control of all drains and other conservancy works within the Union which are not under the control of any other authority; and
- (4) execute all works which are necessary for improving the sanitation, conservancy or drainage of the Union:

Provided that the District Board may itself undertake any such work which, by reason of its magnitude, or of the amount of expense likely to be incurred thereon, cannot, in the opinion of the District Board, be satisfactorily executed by the Union Committee.

Powers of Union Committee as to sanitation. conservancy and drainage.

[3] [116. (1) If it appears to the Union Committee that, for any reason, it is necessary to improve the sanitary condition of any village or part of a village within the Union, the Committee may, in accordance with a scheme approved by the District Board and sanctioned by the Commissioner under rules made by the [6] [Local Government] under this Act,—

- (a) cause huts or privies to be removed either wholly or in part;
- (b) cause private drains to be constructed, altered or removed,
- (c) cause streets, passages and public drains to be constructed or widened:
- (d) cause tanks or low lands to be filled up or deepened; and

[2] As to the registration of births and deaths, see the Bengal Births and Deaths Registration Act, 1873 (Ben. Act 4 of 1873), ante, p. 155.
[3] These sections 115-119 were substituted for the original sections 115-119 by the Bengal Local Self-Government (Amendment) Act. 1998 (Ben. Act 5 of 1908),

the Bengal Local Self-Government (Amendment) Act. 1938 (Ben. 1ct 3 of 1968),

[4] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923

(B. & O. Act 1 of 1923), section 44(a), in Vol. III of this Code.

[5] The words "epidemic diseases and" were inserted by ibid, section 44(b).

[6] The words "Local Government" were substituted for the words "Lieutenant Local Government Local G

pant Governor" by ibid, section 2(3).

^[1] This section 114 was substituted for the original section 114 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 54, post, p. 796.

(Sec. 117.)

- (e) cause such other improvements to be made as, in its opinion, are necessary to improve the condition of such village or part.
- (2) The Union Committee may, by written notice,—
 - (i) require the owner or occupier of any hut, or the owner of any privy, to remove such hut or privy, either wholly or in part, in pursuance of clause (a) of sub-section (1); or
 - (ii) require the owner or occupier of any building to construct private drains therefor, or to alter or remove private drains thereof, in pursuance of clause (b) of sub-section (1).

within a period to be specified in the notice.

- (3) If any work required by any such notice is not executed within the period specified in the notice, the Union Committee may themselves cause such work to be carried out.
- (4) All expenses incurred by the Union Committee under subsection (1) or sub-section (3), including such reasonable compensation as the Committee may think fit to pay to the owners or occupiers of huts or privies removed, shall be met out of the Union Fund.
- [1][117. (1) The Union Committee may, with the sanction of the District Board, employ a special establishment for the cleansing of any villages. village within the Union.

- (2) If any village for which no establishment is maintained under sub-section (1) appears to the Union Committee to be in a filthy condition, the Committee may, by written notice, require the persons who occupy buildings in the village to cleanse their holdings to the satisfaction of the Committee within a period to be specified in the notice.
- (3) If any person on whom notice has been served under sub-section (2) fails to comply with the requisition contained in the notice, the Union Committee shall,

unless reasonable cause to the contrary is shown, cause his holding to be cleansed, and

recover from such person such portion of the costs of such cleansing as may be approved by the Sanitation Committee, as if the same were an arrear of the assessment imposed under the Village Chaukidari Act, 1870, [2] or, where the Chota Nagpur Rural Police Act, [3][1914], B. & O. Act [4] is in force, under that Act.]

Ben. Act 6 of 1870. 1 of 1914.

^[1] See footnote [3], ante, p. 572.

^[2] Printed ante, p. 121.

^[8] The figures "1914" were substituted for the figures "1887" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 45, in Vol. III of this Code.

^[4] Printed in Vol. III of this Code.

(Secs. 118-118A.)

Power of Union Committee to control building and penalties for disobedience.

Power of [1][118. (1) The Union Committee may, subject to rules made by Union Comthe [2][Local Government] under this Act, by written order,—

- (a) direct, in accordance with a scheme approved by the District Board and sanctioned by the Commissioner, in respect of any village, that no building which it is proposed to erect in such village, and no addition to any existing building therein, shall be placed in advance of an alignment to be prescribed by the Committee and demarcated on the ground, and
- (b) prescribe, in accordance with the said scheme, the space which shall intervene between each new building and between new buildings and any road in the village.
- (2) Where any building, or any addition thereto, has been placed in contravention of an order passed by the Union Committee under sub-section (1), the Union Committee may apply to the District Magistrate, and such Magistrate may make an order—
 - (i) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished by the owner of the building or altered by him to the satisfaction of the Committee, as the case may require, or
 - (ii) directing that the work done, or so much of the same as has been executed in contravention of the order passed under sub-section (1), be demolished or altered by the Union Committee at the expense of the owner:

Provided that the Magistrate shall not make any such order without giving the owner and occupier full opportunity of adducing evidence and of being heard in defence.

(3) If any person to whom a direction to demolish or alter any building is given under sub-section (2), clause (i), fails to obey the same, he shall be liable to fine which may extend, in the case of a masonry building, to one hundred rupees, and, in the case of any other building, to twenty rupees, and to further fine which may extend, in the case of a masonry building, to ten rupees, and in the case of any other building, to two rupees, for each day during which he so fails after the first day.]

[1][118A. (1) A Union Committee may provide the Union, or any part thereof, with a supply of water proper and sufficient for public and private purposes; and, for the purposes of this section, may—

(a) construct, repair and maintain tanks or wells, clear out streams or water-courses, and do any other necessary acts:

Watersupply.

^[1] See footnote [3], ante, p. 572.
[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 2(3), printed in Vol. III of this Code

(Sec. 118B.)

- (b) with the sanction of the District Board, purchase or acquire by lease any tank, well, stream or water-course, or any right to take or convey water, within or without the Union;
- (c) with the consent of the owner thereof, utilize, cleanse or repair any tank, well, stream or water-course within the Union, or provide facilities for obtaining water therefrom;
- (d) deal with any tank, well, pool, ditch, drain or place containing, or used for the collection of, any drainage, filth, stagnant water or matter likely to be prejudicial to health—by draining or cleansing it, or otherwise preventing it from being prejudicial to health, but not so as in any case to interfere with any private right; or
- (e) contract with any person for a supply of water.
- (2) When a Union Committee has, under clause (c), with the consent of the owner, cleansed or repaired or provided facilities for obtaining water from any tank, well, stream or water-course, the same shall, subject to any rights retained by the owner, with the concurrence of the Committee, be reserved for drinking and culinary purposes, and shall be kept open to access by the public.
- (3) Any tank, well, stream or water-course which a Union Committee may construct, repair or maintain under clause (a), or purchase or acquire by lease under clause (b), shall remain under the control and administration of the Union Committee; and the Committee may, by order duly published in the village or villages in which such tank, well, stream or water-course is situated, set apart the same, or, subject to the provisions of clause (c), any other tank, well, stream or water-course within the Union, for the supply of water for drinking and culinary purposes.]

[1][118B. The Union Committee, or any member, officer or power of servant thereof, may enter into or upon any building or land, with or entry. without assistants or workmen, in order to make any inspection or execute any work for the purposes of, or in pursuance of, section 115, section 116, section 117, section 118 or section 118A:

Provided as follows:-

- (a) no such entry shall be made between sunset and sunrise;
- (b) no dwelling-house shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry; and
- (c) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry

(Sec. 118C.)

is made, to the social and religious usages of the occupants of the premises entered.]

Method of meeting cost of works of manitation, drainage and conservancy of villages.

[1][118C. (1) If the income of the Union Committee from other sources is insufficient to meet the expenses incurred, or likely to be incurred, by the Committee in carrying out its duties or exercising its powers under section 115, section 116, section 117, section 118 or section 118A,

the Committee may, from time to time, impose on the owners of buildings, tanks, wells or water-courses, or the occupiers of buildings, within the Union, or in any village therein, such assessment as may be required approximately to meet the deficiency, together with ten per cent. above such sum to meet the expenses of collection and losses due to non-realization of their shares from defaulters:

Provided that such assessment shall not be imposed unless—

- (i) it is authorized by a resolution which has been passed at a meeting specially convened for the purpose and in favour of which a majority of not less than two-thirds of the members of the Union Committee have voted, and
- (ii) it is previously sanctioned by the District Board and the Commissioner.
- (2) The Union Committee shall appoint one of their number, or any other person, to receive and collect the said assessment, and to grant receipts for the same and to keep the accounts thereof; and may permit the person so appointed to retain any sum, not exceeding five per cent. of the amount collected by him, to repay the costs of such collection.
- (3) The provisions of sections 15 to 19, 25 to 29, 31 to 34, 46A, Ben. Act 6 46B and 63 of the Village Chaukidari Act, 1870,[2] or, where the Chota of 1870. Nagpur Rural Police Act, 1887, [3] is in force, the provisions of sections Ben. Act 5 9, 10, 13, 15 to 18, 20, 21, 34 and 36 of that Act[2] shall apply to such of 1887. assessment and the payment and recovery thereof:

Provided as follows:—

- (a) all references in any of the said sections of the Village Ben. Act 6 Chaukidari Act, 1870,[2] to a panchayat shall be construed of 1870. as references to the Union Committee:
- (b) the references in section 46B of the said Village Chaukidari Ben. Act 6 Act, 1870,[2] to the chaukidari assessment shall be of 1870.

^[1] See footnote [3] ante, p. 572.
[2] Printed ante, p. 121.
[3] The Chota Nagpur Rural Police Act, 1887 (Ben. Act 5 of 1887), has been repealed and re-enacted by the Chota Nagpur Rural Police Act, 1914 (B. & O. Act 1 of 1914), in Vol. III of this Code, and this reference should now be construed as a reference to that Act, sections 8, 9, 12, 14, 16 to 20, 33 and 35.

(Secs. 118D-119.)

construed as references to the assessment imposed under this section:

- Ben. Act 5 of 1887.
- (c) all references in any of the said sections of the Chota Nagpur Rural Police Act, 1887,[1] to the Deputy Commissioner or the District Superintendent of Police shall be construed as references to the Union Committee;
- (d) the amount to be assessed on any one person shall not exceed five rupees per mensem:
- (e) the amount assessed on any person may be made payable either in lump or peric lical instalments; and
- (f) the proceeds of the said assessment shall be credited to the Union Fund.

[2] [118D. Any person who is aggrieved by any order of a Union Appeals Committee-

against

- (i) directing such person to take any action with regard to his awards and property under sub-section (2) of section 116, sub-section (2) of section 117, or sub-section (1) of section 118, or
- (ii) awarding or refusing to award compensation to such person under sub-section (4) of section 116, or
- (iii) making an assessment in respect of any property of such person in accordance with the provisions of section 118C,

may, within three months from the date of such order, appeal to a sub-committee of members of the District Board to be constituted under clause (e) of section 32 of this Act; and the decision of such sub-committee shall, subject to the exercise of a power of revision at the discretion of the Commissioner, be final.

[27] [119. (1) Notwithstanding anything in the foregoing provisions Power of of this Act, the District Board may, by order in writing, with the Board to sanction of the Commissioner, direct that any specified Union subordinate Committee shall act as the agent of, and shall be subject to the control Union Committee to of, a Local Board, instead of the District Board, either for all purposes Local or for the purposes specified in the order.

- (2) Any order made under sub-section (1) may, with the like sanction, be revoked.
- (3) So long as an order made under sub-section (1) with respect to any Local Board continues in force, the references to the District Board in the foregoing sections of this Act shall, so far as may be necessary, be read as if made to such Local Board.]

Now the Chota Nagpur Rural Police Act, 1914, printed in Vol. 131 of this Code. [2] See footnote [3] ante, page 572.

(Secs. 120-123.)

PART IV.

Control.

Powers of Local Government and of Commissioners and of Magistrates of districts with respect to proceedings of local authorities.

120. It shall be the duty of the [1][Local Government], and of all Commissioners and Magistrates of districts, acting under the orders of the [1] [Local Government], to see that the proceedings of local authorities are in conformity with law and with the rules in force thereunder.

[2] [The Local Government may set aside any resolution or order of any local authority if in its opinion the resolution or order is in excess of the powers conferred by law.]

Records to be open for inspection of Commis-Magistrate of district.

121. Every local authority shall at all times permit the Commissioner or the Magistrate of the district [8] [or such other person as the Local Government may authorize in this behalf, to have access to all its sioner or of books, proceedings and records.

Power of Commissioner or of Magistrate to inspect works.

122. The Commissioner or the Magistrate of the district[3] [or such other person as the Local Government may authorize in this behalf? shall have power at all times to enter on and inspect, or cause to be entered on and inspected, any immovable property occupied by, or any work in progress under the orders of, or any institution controlled by, a local authority.

Appointment of Local Works, and duties to be performed by him.

123. It shall be lawful for the [4] [Local Government] to appoint ment of Inspector of an officer to be Inspector of Local Works in each Commissioner's division, or in more than one such division, and to sanction an establishment for such officer.

> It shall be the duty of the Inspector of Local Works to inspect and advise with regard to all public works under construction or repair vested in, or in charge of, any local authority within the division.

> The Inspector of Local Works shall also perform such duties and exercise such powers as may be assigned to him by any rules made by the [4] [Local Government] under this Act.

^[1] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Seif-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 46, in Vol. III of this Code.

^[2] This paragraph was substituted for the original paragraph by ibid, section 46.

^[3] The words "or such other person as the Local Government may authorize in this behalf" in sections 121 and 122 were inserted by *ibid*, section 47.

^[4] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, section 2(3).

(Secs. 124-125.)

The Inspector of Local Works may at all times enter upon, or cause to be entered upon, any immovable property belonging to any local authority in the division, or any work in progress under its direction, and may require it to furnish such statements, estimates and reports as he thinks fit.

A report of every inspection shall be prepared and a copy thereof forwarded to the District Board concerned, through the Magistrate of the district.

In all matters of professional detail, the local authority shall be guided by the report of the Inspector of Local Works.

124. The Magistrate of the district [1][**] may, by order in Power to writing, suspend the execution of any order or resolution of a local suspend action of authority within the jurisdiction of such Magistrate [2][**], or the doing local of any act which is about to be done, or is being done, by such local authorities by Magisauthority, if in his opinion the execution of the resolution or order, or the trate of doing of the act, is likely to cause [8][serious] injury [4][**] to the district. public, or to any class or body of persons, or to lead to a [3][serious] breach of the peace.

125. [5] [If it appears to the Local Government], on complaint Power to made or otherwise, that a District Board has made default in performing performance any duty imposed on it by or under this Act, the [6] [Local Government], of duties in if satisfied, after due inquiry, that such District Board has made default by as alleged, may, by order in writing, fix a period for the performance of District Board. that duty.

If that duty is not performed within the period so fixed, the [6] [Local Government] may appoint some person to perform it, and may direct that the expense of performing it, with a reasonable remuneration to the person appointed to perform it, shall be forthwith paid by the District Board.

If the expense and remuneration are not so paid the [6][Local Government may make an order directing the person having the custody of the balance of the District Fund to pay the expense and remuneration, or as much thereof as is possible, from that balance, and such person shall make payment accordingly.

^[1] The words "or the Commissioner" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 48(1), in Vol. III of this Code, are omitted.

¹¹¹ of this Code, are omitted.

[2] The words "or Commisioner" repealed by *ibid*, are omitted.

[3] The word "serious" was inserted by *ibid*, section 48(2).

[4] The words "or annoyance" repealed by *ibid*, are omitted.

[5] The words "If it appears to the Local Government" were substituted for the words "When the Commissioner is informed" by *ibid*, section 49(1).

[6] The words "Local Government" were substituted for the word "Commissioner" by *ibid*, section 49(2).

(Secs. 126-130.)

Extraordinary powers in case of emergency.

126. In case of emergency the Magistrate of the district may provide for the execution of any work, or the doing of any act, which a local authority is empowered to execute or do, and the immediate execution or doing of which is in his opinion necessary for the service or safety of the public, and may direct that the expense of executing the work or doing the act, with a reasonable remuneration to the person appointed to execute or do it, shall be forthwith paid by the District Board.

If the expense and remuneration are not so paid, the Magistrate may make an order directing the person having the custody of the balance of the District Fund to pay the expense and remuneration, or as much thereof as is possible, from that balance; and such person shall make payment accordingly.

Magistrate's order under sections 124 and 126 to be reported to Local Government who may confirm, modify or rescind it.

- 127. When the Magistrate of the district makes any order under section 124 or 126, he shall forthwith submit to the [1][Local Government] a copy of the order, with a statement of his reasons for making it, and with any explanation which the local authority concerned may wish to offer, and the [1][Local Government] may thereupon confirm, modify or rescind the order.
- 128. (Commissioner's proceedings to be submitted to Lieutenant-Governor for final orders.) Rep. by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 51.
- 129. (Commissioner's orders under sections 124 and 125 to be submitted to Lieutenant-Governor.) Rep. by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 51.

Powers and duties of Magistrate of district transferred to District Board and Local Board. 130. All powers conferred upon [2][***] Magistrates of districts in regard to District Boards by sections 124, [3][125] and 126 shall be exercised,

[4][in respect of a Union Committee, [5][by the District Board or the Local Board to which the Committee may have been declared, by an

of 1923), section 50, in Vol. III of this Code.

[2] The words "Commissioners and" repealed by *ibid*, section 52(1), are omitted.

[3] The figures "125" in this paragraph of section 130 were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section

56(1) (a), post, p. 796.

[4] This portion in square brackets in section 130 is repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 5 of 1922), is in force. See section 2(1) of and Schedule I to that Act, in Vol. III of this Code.

of this Code.

[5] The portion from "by the District Board" to "subordinate" were substituted for the words "by the Local Board" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 56(1)(b), post, p. 796.

^[1] The words "Local Government" were substituted for the word "Commissioner" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), section 50, in Vol. III of this Code.

(Sec. 131.)

order under section 119, to be, for the purposes of this section, subordinate, and,

in respect of a Local Board, by the District Board.

[1] [When a Local Board makes any order under this section, it shall forthwith submit to the District Board a copy of the order, with a statement of its reasons for making it, and with any explanation which the Union Committee concerned may wish to offer.

The District Board may thereupon confirm, modify or rescind the order.

When a District Board makes any order under this section, it shall forthwith submit to the Magistrate of the district, for submission to the [2] [Local Government], a copy of the order, with a statement of its reasons for making it, and with any explanation which the Local Board[3] [or Union Committee] may wish to offer.

[4][And the Local Government] may thereupon confirm, modify or rescind the order.

[5] [131. (1) If in the opinion of the Local Government a District Power of Board, Local Board or Union Committee is not competent to perform, Government or persistently makes default in the performance of, the duties imposed to on it by or under this Act or otherwise by law, or exceeds or abuses its dissolve or supersede powers, the Local Government may, by notification[6] specifying the District reason for so doing, declare such District Board, Local Board or Union Boards, Local Committee to be incompetent or in default or to have exceeded or Boards and abused its powers, as the case may be; and

Union Committees.

- (a) direct that on a date to be specified in the order the offices of the members of the District Board, Local Board or Union Committee, as the case may be, shall be deemed to be vacant, and require a fresh election to be held on or before the said date; or
- (b) direct that the District Board, Local Board or Union Committee shall be superseded for such period, not exceeding three months, as may be specified in the notification:

^[1] This portion in square brackets in s. 130 is repealed in areas in which Part IV

^[1] This portion in square brackets in s. 130 is repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See s. 2(1) of and Schedule I to that Act, in Vol. III of this Code.

[2] The words "Local Government" were substituted for the word "Commissioner" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 52(2), in Vol. III of this Code.

[3] The words "or Union Committee" were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 56(2), printed post, p. 796 and are repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See s. 2(1) of and Schedule I to that Act, in Vol. III of this Code.

[4] The words "And the Local Government" were substituted for the words "If the Commissioner is dissatisfied with the order he may report the matter to the Lieutenant-Governor who "by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 52(3), in Vol. III of this Code.

[5] This section 131 was substituted for the original section 131 by ibid, s. 53.

[6] For an instance of a notification under s. 131, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 132-133.)

Provided that the Local Government may, as often as it thinks fit, by like notification renew such direction for further periods of three months.

(2) The members of a District Board, Local Board or Union Committee who vacate office by reason of a declaration made under sub-section (1) shall not, unless the Local Government otherwise directs, be deemed disqualified for re-election or re-appointment.

[1][132. When an order of supersession has been passed under clause (b) of sub-section (1) of section 131, the following consequences shall ensue, namely:—

- (a) all the members of the District Board, Local Board or Union Committee shall, from a date to be specified in the order, vacate their offices as such members;
- (b) all the powers and duties which may under the provisions of this or any other Act be exercised and performed by such District Board, Local Board or Union Committee shall, during the period of supersession, be exercised and performed by such person or persons as the Local Government may direct; [2]
- (c) all property vested in such District Board, Local Board or Union Committee shall during the period of supersession vest in the Local Government; and
- (d) before the expiration of the period of supersession elections shall be held and appointments made for the purpose of reconstituting the District Board, Local Board or Union Committee.]
- [3][4][133. (1) If a dispute arises between two or more Union Committees which are subordinate to the same District Board, or which have been declared by any order under section 119 to be, for the purposes of this section, subordinate to the same Local Board, the matter shall be referred to such District Board or Local Board, as the case may be; and the decision of the Board thereon shall be final and binding.
- (2) If a dispute arises between two or more Union Committees within the same district, and such Committees have not all been so declared to be subordinate to the same Local Board, the matter shall be

[1] This section was substituted for the original section by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 54, in Vol. III of this Code.

[2] For an instance of a notification under s. 132(b), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

[8] This section is repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 5 of 1922), is in force. See s. 2(1) of and Schedule I to that Act, in Vol. III of this Code.

[4] This section was substituted for the original sections 133 and 134 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 59, post, p. 797.

Consequences of supersession.

Disputes between two or more Union Committees when to be referred to District Board or Local Board. (Secs. 134-138.)

referred to the District Board; and the decision of the District Board thereon shall be final and binding.]

- 134. (Disputes between two or more Union Committees under the authority of different Local Boards to be referred to District Board when Local Boards cannot agree.) Rep. by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), section 59.
- 135. If a dispute arises between two or more Local Boards within Disputes the area under the authority of a District Board, the matter shall be between two referred to the District Board, and the decision of such District Board Local upon the matter so referred shall be final and binding.

136. (Disputes between municipal authorities or local authorities in referred to the same district to be referred to Magistrate of district.) Rep. by the Board. Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act I of 1923), section 55.

137. If any dispute, for the decision of which this Act does not Decision of otherwise provide, arises between two or more local authorities, or disputes not otherwise between a local authority or authorities and a municipal authority or provided authorities, the matter shall be referred [1][to the Local Government].

to be

And the decision [2][of the Local Government] upon the matter so referred shall be final and binding.

138. It shall be lawful for the [3] [Local Government] to make Power of rules,[4] consistent with this Act, for any District Board or Local Board Government [5][or Union Committee] for the purpose of—

to make

- (a) determining the mode and time of appointment or election of rules. members of Boards[5][and Committees], the term of office and the qualifications and disqualifications of such members, and the qualifications and disqualifications and the registration of voters and candidates, and generally for regulating all elections under this Act [6] and determining the authority who shall decide disputes relating to such elections];
- (b) regulating the conduct of proceedings of Boards and Committees, including the manner in which notices of a meeting shall be given, the

[1] The words "to the Local Government" were substituted for the original clauses (a) and (b) by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 56(1), in Vol. III of this Code.

[2] The words "of the Local Government" were substituted for the words "of the Commissioner or Commissioners, or of the Lieutenant-Governor, as the case may be "by ibid, s. 56(2).

[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by ibid, s. 57(1).

[4] For a list of rules made under section 138, see the Bihar and Orissa Local Statutory Rules and Orders, Volume I, Part VI.

[5] The words "or Union Committee" and the words "and Committees" are repealed for areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See s. 2(1) of and Schedule I to that Act.

^[1] The words "to the Local Government" were substituted for the original

^[6] The words in square brackets were added to clause (a) of section 138 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(1), post, p. 797.

(Sec. 138.)

fixing of a quorum, the due record of proceedings and the language in which business shall be transacted;

- (c) fixing the time within which a [1][**] Vice-Chairman may be elected;
 - (d) regulating the powers of District Boards to transfer property;
- (e) regulating the powers of Boards and Committees to contract and do other things necessary for the purposes of their constitution and the mode of executing contracts;
- (f) determining the [2][intermediate] offices, if any, through which correspondence between Boards and Committees, or members of Boards and Committees, and the [3][Local Government] or [4][its]officers, shall pass;
- (g) prescribing the qualifications of candidates for employment under section 33, [5][and declaring what circumstances shall be a disqualification for continuance of employment under that section]:
- [6][(h) prescribing the closing balance to be maintained by a District Board, the statements, accounts and reports to be submitted to the Local Government, the date for the preparation of the budget estimate and the particulars to be contained therein];
- $\lceil 7 \rceil \lceil (h1) \rceil$ prescribing the conditions on which a house and land may be acquired or on which land may be acquired and a house constructed, by the District Board, for the residence of [8] [an officer or servant of the District Board or Local Board, and the terms on which [8] [such officer or servant | may be required to occupy the same];
- $\lceil 9 \rceil \rceil \lceil (h2)$ determining the separate heads under which the local cess shall be placed under section 52];

^[1] The words "Chairman or" repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 57(2), are omitted.

[2] The word "intermediate" was substituted for the word "immediate" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(2), post, p. 797.

[3] See footnote [3] at page 583, ante.

[4] The word "its" was substituted for the word "his" by ibid, s. 57(3).

^[5] The words in square brackets in clause (g) were added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(3), post, p. 797.

^[6] This clause (h) was substituted for the original clause (h) by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s.

^[7] Clause (\$\hat{h}1\$) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(4), post, p. 797.

^[8] The words in square brackets were substituted for the words "the District Engineer" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 57(5).

^[9] This clause (h2) was substituted for the original clause (h2) by ibid, s. 57(6).

(Sec. 138.)

- (17) [(h3) prescribing the conditions as regards the rate of interest on, and the period and method of repayment of, loans granted by the District Board to Union Committees or Union Boards under sub-clause (f) of clause Seventhly of section 53];
- (i) prescribing forms for statements, estimates and accounts and regulating the keeping, checking and publication of such accounts and the manner of periodical audit under sections 54 and 55;
- (j) regulating the maintenance and management of schools under sections 62, 63 and 64, the construction and repair of buildings connected therewith, and the appointment of masters and assistant masters, and the proper distribution of funds transferred to District Boards under section 65:
- [2][(j1) prescribing the conditions subject to which grants-in-aid may be made under section 63 or section 64A];
- $\lceil 2 \rceil \lceil (j2) \rceil$ regulating the provision, maintenance and management of students' hostels [3] [and the establishment of scholarships] under section
- [2][(j3) prescribing the powers and duties of [4][Committees appointed by the District Board] and [4] [regulating the appointment, term of office and removal from office of members of such Committees]:
- (k) regulating the control and administration of dispensaries. hospitals and places of reception for the sick,[5][including dispensaries and hospitals entrusted to a Joint Committee under section 67A], the construction and repair of buildings connected therewith, and the supply of medicines and medical assistance for the poorer inhabitants of the district, [6] [the training and employment of compounders, midwives and veterinary practitioners, and the promotion of free vaccination];
- (1) prescribing the procedure to be adopted in the appointment of the Engineer to the District Board under section 84, and regulating the performance and exercise of the duties and powers of such Engineer and of the Inspector of Local Works under sections 85 and 123, respectively;
- (m) regulating the submission for approval of plans, designs, specifications and estimates under section 86, [7][and prescribing conditions precedent to the making of any contribution under section 79];

^[1] This clause (\$\hbeta 3\$) was inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923) s. 57(7), in Vol. III of this Code.

[2] These clauses (\$\hbeta 1\$), (\$\hat{j}2\$) and (\$\hat{j}3\$) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(5), \$\hat{post}\$, p. 797.

[3] The words "and the establishment of scholarships" were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 57(8), in Vol. III of this Code.

[4] The words "Committees appointed by the District Board" and "regulating the appointment, term of office and removal from office of members of such Committees", in clause (\$\hat{j}3\$), were substituted for the words "Education Committees" and "regulating the removal of members from office" respectively by \$\hat{ibid}\$, s. 57(9).

[5] The words "including dispensaries and hospitals entrusted to a Joint Committee under section 67A," were inserted by \$\hat{ibid}\$, s. 57(10).

[6] These words in square brackets were added to clause (\$k\$) by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(6), \$\hat{post}\$, p. 797.

[7] These words in square brackets were added to clause (\$m\$) by \$\hat{ibid}\$, s. 60(7).

(Sec. 138.)

- [1][(m1) prescribing, for the purposes of section 86A of this Act, the mode of ascertaining the capitalized value of the estimated cost to the District Board of maintaining bridges, road-ways or foot-ways, and of renewing any bridge, road-way or foot-way which requires periodical renewal, and the mode of determining what classes of bridges, road-ways or foot-ways require periodical renewal];
- [1][(m2) prescribing, for the purposes of section 86C, the method in which the proceeds of tolls, or of the lease thereof, shall be adjusted between the District Boards of adjacent districts];
- (n) regulating the duties and powers of District Boards [2][and Sanitation Committees] in regard to sanitation [3][and for the prevention of epidemic diseases];
- [4][(n1) regulating the duties and powers of a Public Health Board constituted under section 91B];
- (o) regulating the duties of District Boards in regard to taking a census;
- [5][(01) regulating the duties of District Boards in regard to the relief of famine, serious distress or scarcity];
- (p) regulating the establishment and maintenance of staging bungalows and serais, the holding of fairs and exhibitions, the offer of rewards for the destruction of noxious animals, [6] [the establishment and maintenance of veterinary dispensaries, the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals, the improvement of the breed of horses, cattle or asses and the breeding of mules, the making of grants-in-aid under clause (3d) of section 100 of this Act], and the carrying out of any other work likely to promote the health, comfort or convenience of the public:
- [7][(q) regulating the powers of Union Committees in regard to primary schools and dispensaries under sections 112 and 113];
- [7][8][(q1) regulating the powers and duties of Union Committees in regard to sanitation, conservancy and drainage under sections 115 to

^[1] These clauses (m1) and (m2) were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(8), post, p. 797.

^[2] The words "and Sanitation Committees" were inserted by *ibid*, s. 60(9).

^[8] The words "and for the prevention of epidemic diseases" were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 57(11), in Vol. III of this Code.

^[4] This clause (n1) was inserted by ibid, s. 57(12).

^[5] This clause (o1) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(10), post, p. 797.

^[6] These words in square brackets were inserted by ibid, s. 60(11).

^[7] These clauses (q) and (q1) of section 138 are repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See s 2(1) of and Schedule I to that Act, in Vol. III of this Code.

^[8] Clause (q1) was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(12), post, p. 797.

(Secs. 139.)

118C (both inclusive), and defining and prohibiting public nuisances within Unions]:

- (r) providing for the appointment and payment of auditors of the accounts of Boards and Committees;
- (s) affording guidance to District Boards when suits or other proceedings are threatened or have been instituted by or against them in Civil Courts: and

 $\lceil 1 \rceil \lceil (t) \rceil$ generally determining the $\lceil 2 \rceil \lceil (t) \rceil$ generally determining the relations between District Boards, relations between District Boards Local Boards and Union Com- and Local Boards, and for the mittees, and for the guidance of guidance of Boards and Com-Committees and mittees and Government officers in Boards and all all matters connected with the Government officers in with the carrying out of the provisions of connected matters carrying out of the provisions this Act; of this Act;

and may from time to time repeal or alter such rules.

Rules made under this section shall be published in such manner as the [3] [Local Government] may direct, and shall thereupon have the force of law [4][* * *].

[5] [In making any rule under clause (q1) of this section, the [3] [Local Government] may provide that a breach of the same shall be punished with fine which may extend to ten rupees].

By-laws.

139. Every District Board or Local Board empowered in this Power of behalf by the [6] [Local Government] may, [7] [subject to the control of Board and

[1] Clause (t) is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is not in force.

[2] Clause (t) is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See s. 2(1) of and Schedule I to that Act, in Vol. III of this Code.

[3] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 57(1), in Vol. III of this Code.

[4] The following words repealed by ibid, s. 57(13), are omitted:— "and no rules under clause (a) shall come into operation until three months after they have been published as aforesaid".

[5] This clause in square brackets was inserted by the Bengal Local Self-Government.

[5] This clause in square brackets was inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 60(13), and is repealed in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See s. 2(1) of and Schedule I to that Act. in Vol. III of this Code.

[6] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 2(3), in Vol. III of this Code.

[7] The words "subject to the control of the Lieutenant-Governor" were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 64(a), and the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 2(3), in Vol. III of this Code.

(Secs. 140-142.)

Local Board to make by-laws.

the Local Government,] make by-laws[1] for carrying out all or any of the purposes of this Act.

By-laws made under this section shall have the force of law when [2][confirmed by the Commissioner] and published in such manner and for such time as the [8] [Local Government] may direct.

Penalty for infringement of by-laws.

140. In making a by-law under the last preceding section a Board may provide that a breach of the same shall be punished with fine which may extend to fifty rupees, and in the case of a continuing breach with a further fine which may extend to five rupees for every day during which the breach is continued after the offender has been convicted of such breach.

Prosecutions.

141. Prosecutions under this Act for breach of by-laws may be instituted by any Board, or by any person authorized by the Board in this behalf.

A Judge or Magistrate shall not be deemed to be, within the meaning of section 555 of the Code of Criminal Procedure, [4] a party to, 10 of 1882. or personally interested in, any case under this section merely because he is a member of the Board.

Miscellaneous Provisions.

Liability of members of Boards and Union Committees.

Committee. Local

[5] 142. No person shall be liable [7] 142. No person shall be liable for the loss, waste or misapplica- for the loss, waste or misapplication of any money or other tion of any money or other property belonging to the District property belonging to the District Board, [6] [Local Board] or Union Board, or Local Board, unless Committee, unless such loss, waste such loss, waste or misapplication or misapplication is a direct conse- is a direct consequence of his quence of his neglect or misconduct neglect or misconduct while a n.emwhile a member of a Union ber of a District Board or Local Board or Board, and a suit for compensation District Board; and a suit for for the same may be instituted compensation for the same may be against him, in such Court as the

^[1] For a list of by-laws made under section 139, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

[2] The words "confirmed by the Commissioner" were substituted for the words "confirmed by the Lieutenant-Governor" by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 61(b), post, p. 798.

^[8] See footnote [6] on page 587 ante.
[4] Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to section 556 of that Code-see section 3(1) thereof.

^[5] Section 142 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. [6] The words "Local Board" were inserted by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 62, post, p. 798.

[7] Section 142 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force.

See section 2(1) of and Schedule I to thet Act in Vol. III of this Code.

See section 2(1) of and Schedule I to that Act, in Vol. III of this Code.

(Secs. 143-144.)

instituted against him, in such Court as the [1][Local Government] directs, by the District Board with the sanction of the [1][Local Government] or by the Secretary of State for India in Council.

[1] [Local Government] directs, by the District Board with sanction of the [1][Local Government] or by the Secretary of State for India in Council.

143. The [2] [Local Government], before making any rules under Procedure section 138, and a District Board or Local Board, before making any rules and by-laws under section 139, shall publish, in such manner as the [2] [Local by-laws. Government] deems sufficient for giving information to persons interested, the proposed rules or by-laws, together with a notice specifying a date on or after which the same will be taken into consideration; and shall, before making such rules or by-laws, receive and consider any objection or suggestion which may be made by any person with respect to the same before the date so specified.

Every such rule or by-law shall be published in the [2] [official] Gazette in English, and in such other language as the [2] [Local Government] directs, and such publication shall be evidence that the rule or by-law has been made as required by this section.

 $\lceil 3 \rceil$ 144. (1) If any member of a servant maintained by or employed any officer or under a local authority, has, tained by or directly or indirectly, any share or interest in any work done by order of the local authority of which he is a member, or by which he is mainemployed or in any contract with or under such local authority, he shall [4][thereupon be disqualified liable on conviction before a Cri-

[5] 144. (1) If any member of a Penalty on local authority, or any officer or District Board or Local Board, or officer or servant main servant employed Boarda District orBoard, has, directly or indirectly, a local any share or interest in any work authority. done by order of the District tained, or under which he is Board or Local Board of which he is a member, or by which he is maintained, or under which he is employed, or in any contract with to continue in office and shall be or under such District Board or Local Board, he shall [4][thereminal Court to a fine which may upon be disqualified to continue in

under interested Local in contracts

^[1] The words "Local Government" were substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 2(3), in Vol. III of this Code.

[2] The words "Local Government" were substituted for the words "Lieutenant-Governor" and the word "official" for the word "Calcutta" by ibid, s. 58.

[3] Section 144 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is not in force.

[4] The words "thereupon be disqualified to continue in office and shall" were inserted by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 59, in Vol. III of this Code.

[5] Section 144 is in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force.

Seg. 8. 2(1) of and Schedule I to that Act, in Vol. III of this Code.

(Sec. 144.)

extend to five hundred rupees:

Provided that the penalty herein prescribed shall not be deemed to apply by reason only of a person—

- (a) having a share in any joint stock company which shall contract with, or be employed by, or on behalf of, the local authority; or
- (b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the local authority may be inserted; or
- (c) holding a debenture of being otherwise concerned in any loan raised by, or on behalf of, the local authority.

Nevertheless it shall not be lawful for a person having any share or interest, such as is described in clauses (a) and (b), to act as a member of the local authority in any matter relating to a contract or agreement between the local authority and such company or the manager or publisher of such newspaper.

[1] [Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity.]

office and shall] be liable on conviction before a Criminal Court to a fine which may extend to five hundred rupees:

Provided that the penalty herein prescribed shall not be deemed to apply by reason only of a person—

- (a) having a share in any joint stock company which shall contract with, or beemployed by, or on behalf of, the District Board or Local Board; or
- (b) having a share or interest in any newspaper in which any advertisement relating to the affairs of the District Board or Local Board may be inserted; or
- (c) holding a debenture or being otherwise concerned in any loan raised by, or on behalf of, the *District* Board or Local Board.

Nevertheless it shall not be lawful for a person having any share or interest such as is described in clauses (a) and (b), to act as a member of the District Board or Local Board in any matter relating to a contract or agreement between the District Board or Local Board and such company or the manager or publisher of such newspaper.

[1][Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity.]

^{11]} This clause in square brackets was added to section 144 by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 65, post, p. 798.

(Secs. 145-146.)

[1] 145. Every local authority may make compensation out of the District or Union Funds respectively to any person sustaining any damage by reason of the exercise of any of the powers conferred by this Act.

[1]146. No suit shall be brought against [3][**] any District Board, Local Board, or Union Committee, or any of their officers, or any person acting under their direction, for anything done under this Act, until the expiration of one month next after notice in writing has been delivered or left at the office of such Board or Committee, and also (if the suit is intended to be brought against any officer of the said Board or Committee, or any person acting under their direction) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit;

unless such notice he and. proved, the Court shall find for the defendant.

Every such action shall be next after the accrual of the cause of action, and not afterwards.

[2] 145. The District Board may Power to out of the make make compensation compensa-District Fund to any person sus-tion out of taining any damage by reason of the local fund. the exercise of any of the powers conferred by this Act.

[2]146. No suit shall be brought No action against [3][**] any District Board to be brought or Local Board, or any of their against officers, or any person acting under Boards and Committees their direction, for anything done or their under this Act, until the expira-until after tion of one month next after notice one in writing has been delivered or notice of left at the office of such Board and cause of also (if the suit is intended to be brought against any officer of the said Board, or any person acting under their direction) at the place of abode of the person against whom such suit is intended to be brought, stating the cause of action and the name and place of abode of the person who intends to bring the suit:

unless such notice proved, the Court shall find for the defendant.

Every such action shall commenced within three months commenced within three months next after the accrual of the cause of action, and not afterwards.

^[1] Sections 145 and 146 are in force in this form in areas in which Part IV of the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is not

^[2] Sections 145 and 146 are in force in this form in areas in which Part IV of the Hihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), is in force. See s. 2(1) of and Schedule I to that Act, in Vol. III of this Code.

^[3] The words "the members of", repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 60, are omitted.

(Schedules.)

If any such person to whom any such notice is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

If any such person to whom any such notice is given shall, before suit is brought, tender sufficient amends to the plaintiff, such plaintiff shall not recover.

(SCHEDULES.)

THE FIRST SCHEDULE.
(See section 2.)
Repeal of Enactment.

Number and year.	Subject.	Extent of repeal.
1	2	3
Bengal Act 9 of 1880.	To amend and consolidate the law relating to rating for the construction, charges and maintenance of district communications and works of public utility and of provincial public works.	

THE SECOND SCHEDULE. (See section 2.) Amendment of Enactment.

Number and year.	Subject.	Extent of amendment.
1	2	3
Bengal Act 9 of 1880.	To amend and consolidate the law relating to rating for the construction, charges and maintenance of district communicat i on s and works of public utility and of provincial public works,	In section 4, the following definitions shall be substituted for the definition of "the Committee": "'District Board' means the Board constituted under the provisions of the Bengal Local Self-Government Act of 1885."

(Schedules.)

Number and year.	Sudject,	Extent of amendment.
1	•	8
Bengal Act 9 of 1880.	To amend and consolidate the law relating to rating for the construction, charges and maintenance of district communications and works of public utility and of provincial public works.	"District Fund" means the fund formed under section 52 of the Bengal Local Self-Government Act of 1885. In section 9, the words "and, together with other assets of such fund, shall be applied to the purposes mentioned in section [1][109]" shall be omitted. The following section shall be substituted for section 38:— "38. The road cess for each year shall be assessed and levied in Rate at which road each district as provided in section 6, and (subject to the maximum rate in that section mentioned) at such rate as may be determined for such year by the District Board." In section 40, omit the words "as provided in section 155". In sections 82 and 83 the words "District Road Fund" shall be substituted for the words "Committees" and "Committee " respectively. In section 98, the words "District Road Fund" shall be substituted for the words "District Road Fund" shall be substituted for the words "District Road Fund" shall be substituted for the words "District Road Fund" shall be substituted for the words "District Road Fund" shall be substituted for the words "District Road Fund" shall be substituted for the words "District Road Fund" shall be substituted for the words "District Road Fund" shall be substituted for section 108 the words "and of all sums whatsoever which may be at the disposal of the District Road Fund of every Application of Dischift Road Fund of every Application of Dischift Road Fund of every Application of Dischift Road Fund of expenses incurred by the Collector under section 91. Secondly.—To the payment of the cost of establishments entertained and expenses incurred by the Collector under section 91. Secondly.—To the indemnification of the Collector, with the sanction of the Commissioner, for any other costs or damages which he may have incurred, or for which he may have incurred, or for which

^[1] The figures "109" were substituted for the figures "111" by the Amending Act, 1903 (1 of 1903), Schedule II, in Vol. I of this Code.

The Bihar and Orissa Local . [Ben. Act 3 of 1885.] Self-Government Act, 1885.

Number and year.	Subject.	Extent of amendment,	
1	2	3	
Bengal Act 9 of 1880.	To amend and consolidate the law relating to rating for the construction, charges and maintenance of district communications and works of public utility and of provincial public works.	course of the proceedings for the assessment and collection of the cesses under this Act. And the balance, after payment of such expenses, shall be credited to the District Fund of the district [1][and shall be applicable to the following objects, and in the following order, namely:— (a) the payment of any sums which the District Board may, under the Bengal Local Self-Government Act of 1885, from time to time have undertaken to pay as interest on loans raised for expenditure on any of the objects to which the District Road Fund is applicable, and the repayment of suc 1 loans; (b) the payment of the percentage referred	Ben. Act 8 of 1885.
		to in clause Thirdly of section 53 of the said Act; (c) the payment of such of the salaries, pensions, gratuities, grants and percentages referred to in clause Fourthly of the said section as are required for members of establishments employed for improving the means of communication within the district or between the district and other districts; (d) the payment of such of the expenses	
		referred to in clause Fifthly of section 53 of the said Act as are incurred in improving the means of communication within the district, or between the district and other districts, or in carrying out the provisions of section 79 of the said Act;	
		(e) the payment of the expenses referred to in clause Seventhly of section 53 of the said Act; and	
		(f) the making of investments referred to in clause Eighthly of the said section 53.]	

[[]THE THIRD SCHEDULE[2].

^[1] The portion of this section 109 which is enclosed in square brackets was added by the Bengal Local Self-Government (Amendment) Act, 1908 (Ben. Act 5 of 1908), s. 64, post, p. 798.

[2] Schedule III repealed by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 61, is omitted.

BENGAL ACT 1 OF 1886.

[THE BENGAL VILLAGE CHAUKIDARI (AMENDMENT) ACT, 1886.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. Extent. Commencement.
- 2. (Repealed.)
- 3. New section substituted for section 6.
- 4. Amendment of section 8.
- 5. New section substituted for section 9.
- 6. New section to follow section 9.
- 7. Amendment of section 22.
- 8. (Repealed.)
- 9. Amendment of section 41.
- 10. New section substituted for section 43.
- 11. New section substituted for section 44.
- 12. Amendment of section 45.
- 13. New sections to follow section 46.

BENGAL ACT 1 OF 1886.

[The Bengal Village Chaukidari (Amendment) Act, 1886.][1]

(2nd June, 1886.)

An Act to further amend the Village-chaukidari Act, 1870.[2]

Ben. Act 6 of 1870.

Whereas it is expedient to further amend the Village-chaukidari Preamble. Act, 1870; [2] It is enacted as follows:—

PRELIMINARY.

1. This Act shall be read with, and taken as part of, Bengal Act 6 Extent. of 1870[2] as amended by Bengal Act 1 of 1871.

And it shall come into force in all districts to which Bengal Act 6 Commenceof 1870,[2] as amended by Bengal Act 1 of 1871, has been ... extended***[3]

- 2. (New section substituted for section 3.) Rep. by the Amending Act, 1897 (5 of 1897).
 - 3. For section 6 the following shall be substituted:—

6. [Printed ante, p. 123.]

New section substituted for section

- 4. In section 8, for the words "fifteen days" shall be substituted Amendment the words "thirty days," and for the words "two years" shall be $^{\rm of}_{\rm g}$ substituted the words "three years".
 - 5. For section 9 the following shall be substituted:— 9. [Printed ante, p. 124.]

New section substituted for section

[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I-see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette. 1886, Pt. IV, page 9; for Report of Select Committee, see ibid, page 13; and for Proceedings in Council, see ibid, Supplement, pages 144, 189, 493, 616 and 736.

- LOCAL EXTENT.—This Act is to be read with, and taken as part of, the Villago Chaukidari Act, 1870 (Ben. Act 6 of 1870)—see s. 1. Its local extent is therefore the same as that of the latter Act, as to which see footnote [1] on p. 121, ante; s. 1 of the present Act further declares that the Act shall come into force in all districts to which Ben. Act 6 of 1870, as amended by Ben. Act 1 of 1871, has been extended.

The application of the Act in the de-regulationised tracts is barred as follows, namely:-

- in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3(2),

in Vol. I of this Code; and

in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

The whole Act has been repealed by the Bihar and Orissa Village Administration Act, 1922 (B. & O. Act 3 of 1922), s. 2 (2) and Sch. II, printed in Vol. III of this Code. This repeal takes effect in respect of a union in which Pt. III of the Act is in force. For a list of unions to which Pt. III of the Act has been extended, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VII.

 [2] Printed ante, p. 121.
 [3] Formal words which were repealed by the Amending Act, 1903 (1 of 1903), printed in Vol. I of this Code, are omitted.

(Secs. 6-13.)

New section to follow section 9.

6. After section 9 the following shall be inserted:—9A, 9B. [Printed ante, pp. 124-5.]

Amendment of section 22.

- 7. In section 22, for the words "six per cent." shall be substituted the words "ten per cent."
- 8. (Amendment of section 39.) Rep. by the Amending Act, 1897 (5 of 1897).

Amendment of section 41.

- 9. In section 41 after the words "such member shall himself report the same" and before the words "to such officer" shall be inserted the following:—
 - " or cause the same to be reported."

New section substituted for section 43. 10. For section 43 the following shall be substituted:—43. [Printed ante, p. 131.]

New section substituted for section 44. 11. For section 44 the following shall be substituted:—44. [Printed ante, p. 131.]

Amendment of section 45.

12. In section 45 for the words "shall issue his warrant" shall be substituted the words "may issue his warrant," and at the end of the section the following shall be added:—

[Printed ante, p. 132.]

New sections to follow section 46.

- 13. After section 46 the following shall be inserted:—
 46A. Superseded by the Bengal Village-Chaukidari (Amendment)
 Act, 1892 (Ben. Act 1 of 1892), s. 17.
 - 46B. [Printed ante, p. 132.]

BENGAL ACT 2 OF 1887.

[THE BENGAL VACCINATION (AMENDMENT) ACT, 1887.]

CONTENTS.

PREAMBLE.

SECTION.

- !. Construction.
 - (Commencement) Repealed.
- 2. Interpretation.
- 3. Amendment of section 3.
- 4. Amendment of section 4.
- 5. Amendment of section 13.
- 6. New section to follow section 13.
- 7. Amendment of section 28.
- 8. New sections to follow section 29.

SCHEDULE.

BENGAL ACT 2 OF 1887.

[THE BENGAL VACCINATION (AMENDMENT) ACT, 1887.][1]

(9th March, 1887.)

An Act to amend Bengal Act 5 of 1880. [2]

Whereas it is expedient to amend the Bengal Vaccination Act, Preamble. Ben. Act 5 of 1880. 1880; [2] It is enacted as follows:—

PRELIMINARY.

1. This Act shall be read with, and taken as part of, the Bengal Construc-Ben. Act 5 tion of Act. of 1880. Vaccination Act, 1880.[2]

(Commencement.) Rep. by the Amending Act, 1897 (5 of 1897).

- 2. In this Act, unless there be something repugnant in the subject Interpretaor context,—
 - "vessel" includes anything made for the conveyance by water "Vessel." of human beings or of property.

VACCINATION OF CHILDREN.

3. In section 3, immediately before the last paragraph, the following Amendment of section & shall be inserted :-

[Printed ante, p. 309.]

[3][The Schedule hereto annexed shall be annexed as the First Schedule to the Bengal Vaccination Act, 1880[2].]

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903),

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette 1886, Part IV, page 11; and for Proceedings in Council, see ibid, Supplement, pages 141, 187, 493, 630 and 740.

LOCAL EXTENT.-Since this Act is (see s. 1) to be read with and taken as part of the Bengal Vaccination Act, 1880 (Ben. Act 5 of 1880), it has the same local extent as the latter Act, as to which see footnote [1] on p. 305 ante.

The application of the Act is barred inthe District of Angul, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, in Vol. I of this Code.

^[2] Printed ante, p. 305. [3] This paragraph was added by the Amending Act, 1897 (5 of 1897), Sch. II—sec Vol. I of this Code.

(Secs. 4-8.)

Amendment 4. For the first paragraph of section 4, the following shall be substituted:—

[Printed ante, p. 310.]

. VACCINATION OF PERSONS ON BOARD VESSELS.

Amendment of section 13.

5. To section 13 the following shall be added:—
[Printed ante, p. 315.]

New section to follow section 13.

6. After section 13 the following section shall be inserted:—13A. [Printed ante, p. 316.]

MISCELLANEOUS.

Amendment 7. To section 28, after clause (c), the following clause shall be section 28.

[Printed ante, p. 322.]

New sections to follow section 29.

8. After section 29 the following sections shall be inserted: 29A, 29B. [Printed ante, pp. 322-23.]

THE FIRST SCHEDULE.

[Printed ante, p. 325.]

BENGAL ACT 2 OF 1889.

(THE PRIVATE FISHERIES PROTECTION ACT, 1889.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Short title.
- 2. Interpretation-clause.
- 3. Penalties.
- 4. Forfeiture of fixed engine.

Removal of fixed engine.

- 5. Entry upon the land of another or upon private waters with intent to commit an offence.
- 6. Offences under Act considered "cognizable offences".

BENGAL ACT 2 OF 1889.

(THE PRIVATE FISHERIES PROTECTION ACT, 1889.)[1]

(26th June, 1889.)

An Act for the protection of the right of fishing in private waters.

Whereas it is expedient to provide for the protection of private Preamble. rights of fishery; It is hereby enacted as follows:-

1. This Act may be called the Private Fisheries Protection Act, 1889. Short title.

2. In this Act-

Interpretation-clause.

"fish" includes shell-fish and turtles;

- " Fish."
- "fixed engine" means any net, cage, trap or other contrivance "Fixed for taking fish, fixed in the soil or made stationary in any engine." other way;

" private waters " means waters-

(a) which are the exclusive property of any person; or

" Private waters."

- (b) in which any person has an exclusive right of fishery, and in which fish are not confined but have means of ingress or egress.
- 3. Any person who—

Penalties.

- (a) fishes in any private waters, not having a right to fish therein.
- (b) erects, places, maintains or uses any fixed engine in private waters, or puts, or knowingly permits to be put, therein any matter for the purpose of catching or destroying fish without the permission of the person to whom the right of fishery therein belongs,

^[1] Legislative Papers.—For Statement of Objects and Reasons, see Calcutta Gazette, 1889, Pt. IV, p. 6; for Report of Select Committee, see ibid, p. 32; and for Proceedings in Council, see ibid, Supplement, pp. 658, 714, 947 and 960.

The application of the Act is barred in the District of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), in Vol. I of this Code.

It has been declared to be in force in the Sonthal Parganas, see Vol. IV, Pt. IV. OTHER ENACTMENTS.—The Indian Fisheries Act, 1897 (4 of 1897), is to be read as supplemental to this Act—see s. 2 of the former Act, in General Acts, 1887-97, Ed. 1928,

As to fishing in forests, see the Indian Forest Act, 1927 (16 of 1927), ss. 26(1) (i), 32(i), in General Acts, 1924-27, Ed. 1928, pp. 501, 504.

As to fishing-stakes in fairways leading to ports, see the Obstructions in Fairways Act, 1881 (16 of 1881), in General Acts, 1873-86, Ed. 1928, p. 256.

For power to make rules prohibiting or regulating fishing in public parks, see the Bengal Public Parks Act, 1904 (Ben. Act 2 of 1904), s. 4 (2) (f), post, p. 728.

(Secs. 4-6.)

shall be guilty of an offence, and shall be punished for a first offence with a fine not exceeding fifty rupees;

and for a subsequent offence with imprisonment, which may be simple or rigorous, for a term not exceeding one month, or with a fine not exceeding two hundred rupees, or both:

Provided that nothing herein contained shall apply to acts done by any person in the exercise of a bond fide claim of right, or shall prevent any person from angling with a rod and line or with a line only in any portion of a navigable river.

Forfeiture of fixed engine.

4. (1) Any fixed engine erected, placed, maintained or used in contravention of the last preceding section, and any fish taken by means of such engine, or otherwise in contravention of this Act, shall be forfeited.

Removal of fixed engine.

(2) Any such fixed engine may be removed or taken possession of by the Magistrate of the district, or such person as he empowers in this behalf.

Entry upon the land of another or intent to commit an offence.

5. Whoever enters upon land in the possession of another or upon private waters, with intent to commit any of the offences specified in upon private section 3, shall be punished with a fine not exceeding fifty rupees.

Offences under this Act considered " cognizable offences."

6. Offences committed under this Act shall be considered to be "cognizable offences" as defined in the Code of Criminal Procedure[1]. 10 of 1882.

^[1] Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to the letter Act-see s. 3 (1) thereof.

BENGAL ACT 2 OF 1890.

[THE BENGAL VACCINATION (AMENDMENT) ACT, 1890.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. (Repealed.)
- 2. Amendment of preamble of Ben. Act 5 of 1880.
- 3. Amendment of section 1 of Ben. Act 5 of 1880.
- 4 (1) Amendment of definition of "Town of Calcutta".
 - (2) Addition to definition of "Port of Calcutta".
 - (3) (Repealed.)
- 5. Rules and orders in force before passing of Act to be in force in Calcutta as defined by Ben. Act 2, 1888.

BENGAL ACT 2 OF 1890.

THE BENGAL VACCINATION (AMENDMENT) ACT, 1890.

(12th March, 1890.)

An Act to amend the Bengal Vaccination Act, 1880.[2]

Whereas it is expedient to amend the Bengal Vaccination Act, Preamble. Ben. Act 5 1880[2]; It is hereby enacted as follows: of 1880.

- 1. (Commencement.) Rep. by the Amending Act, 1903 (1 of 1903).
- 2. In the preamble of the Bengal Vaccination Act, 1880,[2] for the Amendment words "the Town, Port and Suburbs [3] [of Calcutta] "the words "the of Ben. Act Town of Calcutta and the Port of Calcutta " shall be substituted. 5 of 1880.
- 3. In section 1 of the same Act, for the words "the Town, Port Amendment and Suburbs [3][of Calcutta] " the words " the Town of Calcutta and of section 1, Ben. Act 5 the Port of Calcutta" shall be substituted.
- 4. (1) In section 2 of the same Act, for the definition of "Town of Amendment Calcutta ' the definition "'Town of Calcutta ' means Calcutta as of definition Town Ben. Act 2 defined by the Calcutta Municipal Consolidation Act, 1888[4]," shall be of of 1888. Calcutta." substituted.
 - (2) In the same section, add the following to the definition of " Port Addition to definition of "Port of of Calcutta ":--Calcutta."
 - " or any other law for the time being in force."
 - (3) (Repeal of definition of "Suburbs of Calcutta.") Rep. by the Amending Act, 1903 (1 of 1903).

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I-see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette. 1880, Pt. IV, p. 2; and for Proceedings in Council, see ibid, Supplement, pp. 2, 44, 172 and 200.

¹⁷² and 200.

[2] Printed ante, p. 305.

[3] The words "of Calcutta" in square brackets in ss. 2 and 3 were inserted by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

[4] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), with again has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act 3 of 1923), printed in the Supplement to the Bengal Code, 1913—15, p. 425.

(Sec. 5.)

Rules and orders is sued under section 33[1] of the orders in force before passing of Act to be in force in Calcutta as defined by the Calcutta Municipal Consolidation Ben. Act 2 in force in Calcutta as

(3) And all such rules and orders relating to the Suburbs of Calcutta are hereby repealed.

^[1] Printed ante, p. 305.

^[2] See footnote [4] on p. 609, ante.

BENGAL ACT 1 OF 1892.

[THE BENGAL VILLAGE CHAUKIDARI (AMENDMENT) ACT, 1892.]

CONTENTS.

PREAMBLE.

SECTION.

- 1. Construction and extent.
- 2. (Repeal of definition of "Magistrate" in Ben. Act 6 of 1870, section 1.)
 Repealed.
 - "District Magistrate" substituted for "Magistrate of the District" and "Magistrate".
 - 3. New section substituted for section 3.
 - 4. New section inserted after section 3.
 - 5. New section substituted for section 4.
 - 6. (Repealed.)
 - 7. New section substituted for section 11.
 - 8. New section substituted for section 12.
 - 9. New section substituted for section 13.
- 10. New section substituted for section 14.
- 11. New section substituted for section 35.
- 12. (Repealed.)
- 13. New section substituted for section 39.
- 14. New section substituted for section 42.
- 15. Amendment of section 43.
- 16. Amendment of section 44.
- 17. New section substituted for section 46A.
- 18. New section substituted for section 62.
- 19. New Schedule substituted for Schedule B.

BENGAL ACT 1 OF 1892.

THE BENGAL VILLAGE CHAUKIDARI (AMENDMENT) ACT, 1892. [1]

(19th October, 1892.)

An Act to further amend the Village Chaukidari Act, 1870. [2]

Whereas it is expedient to further amend the Village Chaukidari Preamble. Ben. Act 6 of 1870. Act, 1870; [2]

It is enacted as follows:-

- 1. This Act shall be read with, and taken as part of, Bengal Act 6 Construction of 1870,[2] as amended by Bengal Act 1 of 1871[3] and Bengal Act 1 and extent. of 1886; [4] and it shall extend to all districts in which the said Act so amended is now or may be hereafter in force.
- 2. (1) [Repeal of definition of "Magistrate" in Ben. Act 6 of "District Magistrate" 1870, s. (1). Rep. by the Amending Act, 1903 (1 of 1903).
- (2) Except as is otherwise provided in this Act, for the words for "Magis-"Magistrate of the District" and for the word "Magistrate" so often District" as they occur respectively, in the Village Chaukidari Act, 1870,[2] as and "Magisamended by Bengal Act 1 of 1871[3] and Bengal Act 1 of 1886,[4] the trate." words "District Magistrate" shall be substituted.
- (3) In section 64, the words "and Magistrates" shall be omitted; and for the words "Magistrates of Districts," the words "District Magistrates " shall be substituted.
 - 3. For section 3 * * * [5] the following shall be substituted:— New section [Printed ante, p. 122.]
 - 4. After section 3 the following section shall be inserted:— 3A. [Printed ante, p. 123.]

New section inserted after section 3.

for section

ceedings in Council, see ibid, Supplement, pp. 768, 1154, 1393, 1488 and 1710.

LOCAL EXTENT.—This Act is to be read with, and taken as part of, the Village Chaukidari Act, 1870 (Ben. Act 6 of 1870), and extends to all districts in which that Act is in force—see s. 1.

The application of the Act is barred inthe Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),

printed in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (?), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3 (2), printed in *ibid*. [2] Ben. Act 6 of 1870 is printed ante, p. 121.

[8] Printed ante, p. 143. [4] Printed ante, p. 597.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. II—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1892, Pt. IV, p. 1; for Report of Select Committee, see ihid, p. 24; and for Pro-

^[5] The words and figures "as amended by section 2 of Bengal Act 1 of 1886," were repealed by the Amending Act, 1897 (5 of 1897), in Vol. I of this Code, and are omitted.

(Secs 5-19.)

New section substituted for section 4.

- 5. For section 4 the following shall be substituted:—4. [Printed ante, p. 123.]
- 6. (Partial repeal of section 5.) Rep. by the Amending Act, 1903 (1 of 1903).

New section substituted for section 11. 7. For section 11 the following shall be substituted:—11. [Printed ante, p. 125.]

New section substituted for section 12. New section substituted for section 13.

- 8. For section 12 the following shall be substituted:—12. [Printed ante, p. 125.]
- 9. For section 13 the following shall be substituted:—13. [Printed ante, p. 125.]

New section substituted for section 14. 10. For section 14 the following shall be substituted:—
14. [Printed ante, p. 126.]

New section substituted for section 35.

- 11. For section 35 the following shall be substituted:—35. [Printed ante, p. 129.]
- **12.** (Repeal of sections 36 and 37.) Rep. by the Amending Act. 1903 (1 of 1903).

New section substituted for section 39. For section 39 the following shall be substituted:—
 [Printed ante, p. 129.]

New section substituted for section 42.

14. For section 42 the following shall be substituted:—42. [Printed ante, p. 131.]

Amendment of section 43.

15. In section 43, for the words "or person as the Magistrate shall appoint," the words "as the Local Government may by rules made under this Act prescribe or direct," shall be substituted.

Amendment of section 44. 16. In section 44, for the words "as the Magistrate may appoint," the words "as the Local Government may prescribe or direct," shall be substituted.

New section substituted for section 46A. 17. For section 46A the following shall be substituted:—46A. [Printed ante, p. 132.]

New section substituted for section 62. 18. For section 62 the following shall be substituted:—62. [Printed ante, p. 136.]

New Schedule substituted for Schedule B.

19. For Schedule B the following shall be substituted:—Sch. B. [Printed ante, p. 138.]

BENGAL ACT 3 OF 1895.

(THE LAND RECORDS MAINTENANCE ACT, 1895.)

CONTENTS.

PART I.

PRELIMINARY.

PREAMBLE.

SECTION.

- 1. (1) Short title.
 - (2) Extent.
 - Commencement.
- 2. Interpretation-clause.

PART II.

REGISTRATION OF MUTATIONS.

- 3. Registrars of Mutations.
- 4. Registers.
- 5. Landlords' statements.
- 6. Notice of transfer or succession to be given to Registrar of Mutations.
- 7. The contents of the notice.
- 8. Duty of Registrar on receipt of notice from transferor or transferee.
- 9. Duty of Registrar on receipt of notice from successor.
- 10. Appearance by agent.

- Powers-of-attorney.
 Law as to summonses and commissions.
 Reason for refusal to register to be recorded.
 Procedure on denial of transfer.
- 15. Procedure when transferor's name not in record-of-rights.
- 16. Appeal against refusal to register. 17. Registrar to give receipt for notice and, if required, copy of entries in register.
- 18. Registrar to allow inspection, and to give certified copies of entries in register.
- 19. Fees to be fixed by the Local Government.
- 20. Fees under Tenancy Act.
- 21. Notice by non-occupancy or under-raiyats.
- 22. Registration of instruments effecting transfer of tenant-right and simultaneous registration of mutations.
- 23. Disability on failure to give notice.
- 24. Penalty for omission to give notice under section 6.
- 25. Penalty for omission to file statement under section 5.
- 26. Penalty for omitting to make entry or making incorrect entry in register with intent to injure.
- 27. Penalty for certain other offences.
 - (a) Making false statements before Registrar of Mutations.
 - (b) False personation.
 - (c) Abetment of certain offences.

616 The Land Records Maintenance Act, 1895. [Ben. Act 3 of 1895.]

PART III.

RECOVERY OF EXPENSES OF A SURVEY AND PREPARATION OF A RECORD-OF-RIGHTS.

SECTION.

- 28. Recovery of expenses of initial survey, etc.
 29. Area, rate and date of recovery of expenses.
 30. Payment of expenses by proprietors.
 31. Payment of expenses by tenants and rent-free owners and occupiers.
 32. Recovery from successors in interest.

PART IV.

MISCELLANEOUS.

- 33. Registrar of Mutations to be public servants, and their records public records.
- 74. Appeals.35. Local Government may vest officer with special appellate powers.
- 36. Power to make rules for selection, etc., of Sub-Registrars.

BENGAL ACT 3 OF 1895.

(THE LAND RECORDS MAINTENANCE ACT, 1895.)[1]

(29th May, 1895.)

An act to provide for the Maintenance of Records of Tenant-rights in Bengal[2], and for the recovery of the cost of Cadastral Surveys and Settlements.

Whereas it is expedient to provide for the maintenance of records Preamble. of tenant-rights and of settlement records in Bengal, [2] and for an alternative method of recovering the cost of cadastral surveys and settlements:

It is hereby enacted as follows:-

PART I.

PRELIMINARY.

- 1. (1) This Act may be called "The Land Records Maintenance short title. Act, 1895."
- (2) It shall come into force only in Districts or parts of Districts of Extent. which a field survey and record-of-rights have been made under Chapter X of the Bengal Tenancy Act, 1885[8] or under any other law for the time being in force, and to which the Local Government may, from time to time, extend it by an order[4] published in the Calcutta Gazette;

and thereupon this Act shall commence and take effect in the Commence-Districts or parts of Districts named in such order on the day which shall be in such order provided for the commencement thereof.

under s. 1.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, Gazette, 1895, Pt. IV. p. 4; and for Proceedings in Council, see ibid, 1895, Supplement, pp. 142, 326, 494, 589, 659 and 720.

LOCAL EXTENT.—This Act extends only to districts or parts of districts notified

The application of the Act is barred inthe Angul District. by the Angul Laws Regulation, 1913 (3 of 1913), s. 3(2), printed in Vol. I of this Code; and

in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872
(3 of 1872), s. 5(2), as amended by the Sonthal Parganas Justice and Laws
Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of ibid.

[2] This includes the present Province of Bihar and Orissa except the district of

Sambalpur.

^[3] Printed in Vol. I of this Code. [4] For references to orders made under section 1 (2) for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Secs. 2-5.)

Interpretation-clause.

2. (1) In this Act all words and expressions defined in the Bengal Tenancy Act, 1885,[1] shall have the meanings attributed to them, 8 of 1885. respectively, in that Act,

and the word "addition" shall have the meaning attributed to it 3 of 1877. in the Indian Registration Act, 1877.[2]

(2) By the term "record-of-rights" shall be understood the settlement record of tenant-rights called the *khatian* or such new editions of such record as may be prepared under rules made under this Act, or such other corresponding record of tenant-rights as may be declared by the Board of Revenue[3] to form the record-of-rights for any District or part of a District. A record-of-rights includes entries duly made in a Register of Mutations.

PART II.

REGISTRATION OF MUTATIONS.

Registrars of Mutations.

3. The Sub-Registrars appointed under the Indian Registration Act, 1877, [1] shall be Registrars of Mutations under this Act.

Registers.

4. The Registrar of Mutations shall keep such registers as shall, from time to time, be prescribed by the Local Government, including, for every village within the limits of the sub-district, a Register of Mutations, in which there shall be recorded changes affecting the record-of-rights of that village, and containing such particulars as the Board of Revenue[3] may, from time to time, with the sanction of the Local Government, prescribe.

Landlords' statements. 5. (1) Whenever the Local Government shall issue a notification in the Calcutta Gazette to that effect, every landlord shall, within the period prescribed in the notification, file, in the office of the Registrar of Mutations, within the sub-district in which his tenants' land is situated, a statement, in a form to be prescribed by the Local Government, showing truly, to the best of his knowledge and belief, the changes, if any, which have taken place in his tenants' rights, by reason of transfer or succession, since the record-of-rights was prepared, or since the last statement was filed.

1928, p. 354.

[3] As to the present constitution and power of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

^[1] Printed in Vol. I of this Code.
[2] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), and this reference should now be construed as a reference to clause (1) of section 2 of the latter Act, printed in General Acts, 1898-1909, Ed. 1928, p. 431, see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.

(Secs. 6-8.)

- (2) The Collector of the District shall cause such notification to be published by affixing a copy thereof in some conspicuous place in the office of such Collector, in every Civil Court, in every police-station, and in the office of every Subdivisional Officer within the District, and in any other manner which the Local Government may from time to time direct.
- 6. Every tenure-holder, raigat at fixed rates and occupancy raigat, Notice of who transfers his tenure or holding, or any part thereof, and every person transfer or succession to claiming to be in possession of any tenure or holding as a tenure-holder, be given to raiyat at fixed rates, or occupancy raiyat in consequence of a transfer Registrar of or of intestate or testamentary succession, shall, within four months Mutations. from the date upon which he gave or took possession, as the case may be, give notice of the fact to the Registrar of Mutations within whose subdistrict the whole or some portion of the land to which the notice relates is situate, at his office:

Provided that a notice under this section is receivable although the prescribed period has elapsed:

Provided further that when any person has duly given notice under this section, all other persons are released from the obligation of giving notice in respect of the same transfer or succession:

Provided further that when an instrument effecting a transfer of tenant-right has been registered under the provisions of the Indian Registration Act, 1877,[1] all persons are released from the obligation of giving notice under this section in respect of the same transfer.

3 of 1877.

7. The notice shall contain:

The contents

- (a) in the case of a transfer, the names of the transferor and the of the transferee, or in the case of a succession, the name of the notice. deceased and his successor,
- (b) a specification of the nature of the interest transferred or acquired,
- (c) the survey number of the lands as entered in the record-ofrights, and
- (d) such further particulars as the Local Government may, from time to time, prescribe.
- 8. (1) The Registrar of Mutations shall, on receipt of a notice under Duty of section 6, whether given within the prescribed period or not, from a Registrar on transferor or transferee, ascertain if both the transferor and the receipt of transferee, or in the case of the death of either party since the transfer, transferor or if the one party and the representative of the other party admit the transferee. transfer, or in the case of the death of both parties if their respective

^[1] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act. 1908 (16 of 1908), printed in General Acts, 1898-1909, Ed. 1928, p. 431, and this reference should now be construed as a reference to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97. Ed. 1928, p. 354.

(Secs. 9-10.)

representatives admit the transfer, and if both transferor or transferee or their respective representatives admit the transfer, he shall, after satisfying himself as to the identity of the persons appearing before him, cause the following particulars to be endorsed on the notice (that is to say):—

- (a) the signature and addition of every person admitting the transfer; and if such transfer has been admitted by the representative or agent of any person, the signature and addition of such representative or agent,
- (b) any payment of money or delivery of goods made in the presence of the Registrar of Mutations in reference to the transfer, and any admission of receipt of consideration, in whole or in part, made in his presence in reference to such transfer,

and shall affix the date and his signature to these endorsements, and shall register the transfer in the Register of Mutations in such manner as the Local Government shall from time to time by rule prescribe.

(2) If necessary, the Registrar of Mutations may issue a summons for the attendance of either or both the transferor and transferee, or their respective representatives, either simultaneously or at different times, at his office:

Provided that, in lieu of issuing a summons, he shall either himself go and examine, or issue a commission for the examination of any person who is:—

- (a) exempt by law from personal appearance in Court,
- (b) unable by reason of bodily infirmity, without risk or serious inconvenience, to attend at the office, or
- (c) in jail under Civil or Criminal process.

Duty of Registrar on receipt of notice from successor.

9. The Registrar of Mutations on receipt of a notice under section 6, whether within the prescribed period or not, from a person claiming by succession, shall, after satisfying himself as to the identity of such person and causing the signature and addition of such person to be endorsed on the notice by a notice affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice, and deny the succession, and if within that period no one appears and denies the succession, he shall enderse a statement of the fact on the notice, affixing the date and his signature to the endorsements, and shall register the succession in the Register of Mutations in such manner as the Local Government shall from time to time by rule prescribe.

Appearance by agent. 10. Notwithstanding anything contained in sections 8, 9 and 12, any person may attend at the office of the Registrar of Mutations by agent

(Secs. 11-13.)

duly authorised by power-of-attorney executed and authenticated in manner hercinafter mentioned.

11. (1) For the purposes of the last preceding section, the powers-ofattorney here mentioned shall alone be recognized—

- (a) if the principal at the time of executing the power-of-attorney resides in British India, a power-of-attorney executed before and authenticated by any Magistrate or the Registrar or Sub-Registrar appointed under section 6 of the Indian Registration Act, 1877,[1] within whose district or sub-3 of 1877. district the principal resides:
- (b) if the principal at the time aforesaid does not reside in British India, a power-of-attorney executed before and authenticated by a notary public, or any Court, Judge, Magistrate, British Consul or Vice-Consul or representative of Her Majesty or of the Government of India:

Provided that the following persons shall not be required to attend at any office or Court for the purpose of executing any such power-ofattorney as is mentioned in clause (a) of this section:—

persons exempt by law from personal appearance in Court; persons who by reason of bodily infirmity are unable, without risk or serious inconvenience, so to attend; and persons who are in jail under Civil or Criminal process.

- (2) In every such case the officer, if satisfied that the power-ofattorney has been voluntarily executed by the person purporting to be the principal, may attest the same without requiring his personal attendance at the office or Court. To obtain evidence as to the voluntary nature of the execution, the officer may go to the person purporting to be the principal and examine him or issue a commission for his examination. Any power-of-attorney mentioned in this section may be proved by the production of it without further proof, when it purports on the face of it to have been executed before and authenticated by the officer hereinbefore mentioned in that behalf.
- 12. The law for the time being in force as to summonses, Law as to commissions and the compelling the attendance of persons summoned in summonses suits before Civil Courts shall, mutatis mutandis, apply to any summons sions. or commission issued, and any person summoned, under this Act.
- 13. Whenever a Registrar of Mutations, after receipt of a notice Reason for under section 6, does not register the transfer or succession in respect of refusal to which it is given, he shall make an entry of the fact and state his be recorded.

^[1] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), printed in General Acts, 1898-1909, Ed. 1928, p. 451, and this reference should now be construed as a reference to section 6 of the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.

(Secs. 14-18.)

reasons in such manner as the Local Government may from time to time prescribe.

Procedure on denial of transfer.

14. If any of the persons purporting to have signed the notice, or any one mentioned therein as transferor or transferee or in the case of the death of either, if his representative denies the transfer,

or if any such person appears to be a minor, an idiot, or a lunatic, or if any person, where the claim is by succession, appears before the Registrar on issue of a notice under section 9, and denies the succession, the Registrar of Mutations shall refuse to register the mutation.

Procedure feror's name not in record-ofrights.

15. If the name of a transferor, or of a deceased person through when trans- whom succession is claimed, inserted in a notice given under section 6, is not recorded in the record-of-rights as that of the person in possession of the land specified in the notice, the Registrar of Mutations shall, without registering the transfer or succession, as the case may be, by a notice, affixed in a conspicuous place, and by beat of drum, in the village in which the land claimed is situated, call upon any person who desires to do so to appear before him at his office within one month from the date of the last-mentioned notice and deny that the alleged transferor, or deceased person through whom succession is claimed, was at the time of the alleged transfer in possession of the land specified in the notice.

> And if no person within the prescribed period so appears and denies, the Registrar of Mutations shall, if the other provisions of the Act are complied with, record the transfer or succession, the subject of the notice, in the Register of Mutations.

Appeal against refusal to register.

16. (1) When a Registrar of Mutations has made an order refusing to register a transfer or succession, an appeal shall lie within thirty days from the date of the order against such order to the Collector of the District to whom such Registrar of Mutations is subordinate; and the Collector may, after taking such evidence as he thinks necessary, reverse or alter such order: and if the Collector directs the transfer or succession to be registered, the Registrar of Mutations shall obey such order,

and such registration shall take effect as if the transfer or succession had been registered when the notice was first given under section 6.

(2) No appeal shall lie from any order of a Collector passed under this section.

17. The Registrar of Mutations shall give to the person giving a notice under section 6, a receipt therefor, and shall upon his application, grant to him, free of charge, a copy of the entries made in the Register of Mutations in pursuance of such notice.

give receipt for notice and, if required, copy of entries in register. Registrar to copies of en-therefor. tries in

Register.

Registrar to

18. (1) On payment of the prescribed fees, the Register of Mutations allow inspec shall be open to inspection by any person applying to inspect the same, give certified and a copy of any entry therein shall be given to any person applying

Government.

(Secs. 19-22.)

- (2) Copies given under this section shall be signed and sealed by the Registrar of Mutations and shall be admissible for the purpose of proving the contents of the original entry.
- 19. (1) The Local Government shall from time to time prepare Fees to be tables of fees payable— Local
 - (a) for the registration of mutations—
 - (i) within the prescribed period.
 - (ii) after the prescribed period.
 - (b) for copies of entries in the Register of Mutations,
 - (c) for inspecting the Register of Mutations,
 - (d) for notices, processes and commissions given or issued under
- (e) for such other matters as appear to the Local Government necessary to effect the purposes of this Act, and may from time to time alter such tables.
- (2) Tables of fees so payable shall be published in the Calcutta Gazette, and a copy thereof, in English and the Vernacular language of the district, shall be exposed to public view in the office of every Registrar of Mutations.
- (3) All fees for the registration of mutations shall be payable at the time when the notice is given under section 6.
- 20. The fees payable to the Collector under sections 15 and 18 of Fees under the Bengal Tenancy Act, 1885,[1] may be paid to the Registrar of Tenancy Mutations, when notice is given under section 6, and such payment shall be held to be payment to the Collector, and the Registrar of Mutations shall forthwith transmit all fees so paid to the Collector, and such notice to the Registrar of Mutations shall be held to be a notice to the Collector under sections 15 and 18 of the Bengal Tenancy Act, 1885.[1] 8 of 1885.
 - 21. Any non-occupancy raiyat or under-raiyat, if he thinks fit, may Notice by give any notice which a tenure-holder, raiyat at fixed rates and occu-cy or underpancy raiyat is bound to give under section 6, and if he gives such raiyats. notice, the provisions of this Act, as far as they are applicable, shall thereupon apply.
 - 22. A Sub-Registrar, registering an instrument effecting a transfer Registration of tenant-right, or under the provisions of sections 64 and 65 of the of instruments effect-Indian Registration Act, 1877, [2] receiving a memorandum of a transfer ing transfer of tenant-right, shall, as Registrar of Mutations, make an entry in the of tenant-right Register of Mutations as if he had received a notice under section 6.

taneous registration of mutations.

8 of 1885.

3 of 1877.

^[1] Printed in Vol. I of this Code.
[2] Act 3 of 1877 has been repealed and re-enacted by the Indian Registration Act, 1908 (16 of 1908), printed in General Acts, 1898-1909, Ed. 1928, p. 431, and this reference should now be construed as a reference to sections 64 and 65 of the latter Act-see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 354.

(Secs. 23-27.)

Disability on failure to give notice.

- 23. (1) No person bound to give notice under section 6 shall, after the period therein mentioned, be entitled to obtain a decree for, or recover, the rent of any land the subject of the transfer or succession until he has given such notice, and if the defendant denies that the notice has been given, or if the Court thinks fit, it may require him to file a certified copy of the entry in the Register of Mutations relative to such land, or to adduce evidence to the satisfaction of the Court that the notice was duly given.
- (2) No tenant bound to give notice under section 6 shall, after the period therein mentioned, in any suit in which his landlord is plaintiff and he is a defendant, be entitled to adduce evidence that he is a tenureholder, raiyat at fixed rates or raiyat with a right of occupancy in the land held by him until he has given such notice, but the Court in which any such suit is tried shall afford the defendant sufficient time to enable him to give such notice.

Penalty for omission to give notice under section 6.

24. Whoever voluntarily or negligently omits to give, within the prescribed time, notice under section 6, shall be liable to such fine, not exceeding fifty rupees, as the Collector of the District may see fit to impose.

Penalty for omission to file statesection 5.

25. After a notification has been issued under section 5, whoever voluntarily or negligently omits to file, within the period therein speciment under fied, the required statement, shall be liable to such fine, not exceeding one hundred rupees, as the Collector of the District may see fit to impose:

Provided that no person shall be fined under this or the last preceding section who at any time prior to the institution of proceedings thereunder, or in the discretion of the Collector of the District at any time after such institution, has filed the statement required by section 5 or given a notice required by section 6.

Penalty for omitting to make entry or making incorrect entry in Register with intent to injure.

26. Every Registrar of Mutations and every person employed in his office for the purposes of this Act, who being charged with the duty of making any entry in the Register of Mutafions, voluntarily omits to make such entry, or makes any entry therein which he knows or believes to be incorrect, intending thereby to cause or knowing it to be likely that he may thereby cause injury, as defined in the Indian Penal Code, 45 of 1860. to any person, shall be punished with imprisonment for a term which may extend to two years, or with fine, or with both.

Penalty for

27. Whoever commits any of the following offences shall be punishcertain other able with imprisonment for a term which may extend to two years, or with fine, or with both:—

Making false statements before Registrar of Mutations

(a) intentionally makes any false statement, whether on oath or not, and whether it has been recorded or not, before any Registrar of Mutations in any proceeding or inquiry under this Act:

(b) falsely personates another, and in such assumed character False personates presents any notice or makes any admission or statement, nation. or causes any summons or commission to be issued, or does any other act in any proceeding or inquiry under this Act;

45 of 1860.

(c) abets, within the meaning of the Indian Penal Code, anything Abetment of made punishable under this or the last preceding section. certain offen-

PART III.

RECOVERY OF EXPENSES OF A SURVEY AND PREPARATION OF A RECORDof-Rights.

8 of 1885.

- 28. It shall be lawful for the Local Government, instead of proceed-Recovery of ing under section 114 of the Bengal Tenancy Act, 1885,[1] to recover expenses of from all or any of the proprietors, landlords, tenants and rent-free survey, etc. owners and occupiers in any District or part of a District, either in one year or several years, and in the manner specified in the sections following, their shares of all the expenses declared by the Local Government to be recoverable from proprietors, landlords, tenants and rent-free owners and occupiers, which have been incurred in making a survey and record-of-rights and a settlement of rents under Chapter X of the Bengal Tenancy Act, 1885,[1] such costs not having been incurred for the purposes of a settlement of land-revenue.
- 29. The Local Government may from time to time determine the Area, rate total expenses which have been incurred in any District or part of a recovery of District in making a survey and record-of-rights, and the amounts (in expenses. such proportions as the Local Government may from time to time determine) which shall be paid by the proprietors, landlords, tenants and rent-free owners and occupiers respectively in such District or part of a District, and the date from which the expenses aforesaid shall be recovered; and may specify the rate per acre to be paid by the said proprietors, landlords, tenants and rent-free owners and occupiers.

30. The amount due from proprietors shall be paid together with Payment of such instalment of land-revenue as the Local Government may direct, proprietors. and arrears shall be recoverable under the law [2] for the time being in force for the recovery of public demands.

31. The amount due from tenants and rent-free owners and Payment of occupiers shall, subject to any orders passed by the Local Government expenses by tenants and under section 28, be paid by them to the Settlement Officer, on tender rent-free of such extract from the record-of-rights as they may be entitled to owners and occupiers. receive.

^[1] Printed in Vol. I of this Cole. [2] See now the Bihar and Orissa Public Demands Recovery Act, 1914 (R & U. Act 4 of 1914), printed in Vol. III of this Code.

⁴⁰ 6 L. D.

(Secs. 32-36.)

Arrears shall be recoverable under the law[1] for the time being in force for the recovery of public demands.

Recovery from successors in interest. 32. When any proprietor, landlord, tenant or rent-free owner or occupier liable to pay any portion of the expenses under an order passed under this Part since such expenses were incurred, has died or has transferred, in whole or in part, his interest in any land on account of which he may have become liable, and such portion of the expenses remains unpaid, it shall be lawful for the Collector to recover the said expenses, or any portion thereof, from the person in possession of such interest or portion thereof.

Such expenses shall be recoverable under the law[1] for the time being in force for the recovery of public demands.

PART IV.

MISCELLANEOUS.

Registrars of Mutations to of Mutations, and every person appointed temporarily to discharge the public servants, and duties of any such office, shall be deemed to be a public servant within their records the meaning of section 21 of the Indian Penal Code, and all official records 45 of 1860. public records.

and papers kept by any such officer under this Act shall be held to be

public records and the property of Government.

Appeals.

34. Every order of a Registrar of Mutations affecting any entry in the Register of Mutations shall be appealable for a period of one month from the date thereof to the Collector of the District.

No appeal shall lie from any order of a Collector passed under this section.

Local Government may vest officer with special appellate powers. 35. The Local Government may from time to time vest any officer other than the Collector of the district with special appellate powers under this Act: and every officer so vested shall be competent to hear and decide any appeal which the Collector of the district is competent to hear and decide under this Act.

Power to make rules sanction of the Local Government or the Board of Revenue, with the for selection, sanction of the Local Government, may, from time to time, make, repeal etc., of Sub- and alter rules [2] consistent with this Act—

Registrars.

(a) regarding the experiment, control discipling and revenue.

(a) regarding the appointment, control, discipline and payment of all Registrars of Mutations and their establishments;

(b) prescribing the manner of making entries of mutations in the record-of-rights, preparing new editions of such records,

^[1] See now the Bihar and Orissa Public Demands Recovery Act, 1914, (B. & O. Act 4 of 1914), printed in Vol. III of this Code.
[2] For a list of rules made under section 36 for Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 36.)

and re-publishing them from time to time, or otherwise making them available for public information;

- (c) regarding the distribution of the expenses incurred under Part III, and
- (d) generally for the purpose of giving effect to the provisions of this Act.
- (2) The provisions of section 190 of the Bengal Tenancy Act, 8 of 1885. [1] shall apply to rules made under clauses (b), (c) and (d).

[1] Printed in Vol. I of this Code.

BENGAL ACT 8 OF 1895.

(THE BENGAL SANITARY DRAINAGE ACT, 1895.)

CONTENTS.

PART I.

CHAPTER I.

PRELIMINARY.

SECTION.

1. Short title and extent. (Commencement.) Repealed.

4

2. Definitions.

CHAPTER II.

APPOINTMENT OF THE COMMISSIONERS.

- 3. Appointment of "the Commissioners."
 4. Procedure when several local authorities are interested.
 5. Resignation of "the Commissioners."

PART II.

CHAPTER I.

DRAINAGE SCHEME.

- 6. The Commissioners to direct survey, etc., and forward survey and preliminary scheme to the Collector.
- 7. The Collector to publish notification.
- 8. The Commissioners to consider the survey, preliminary scheme and objections, and report thereon.
- 9. District Board to consider the survey and preliminary scheme.
- 10. Procedure, if survey and preliminary scheme are rejected.

 11. Procedure, if survey and preliminary scheme are adopted.

 12. Procedure to be followed by the Collector.

 13. "Scheme" and "local area."

- 14. Powers of Local Government.
- 15. District Board may re-consider scheme, etc., adopted by them.
 16. Land required for drainage works how to be acquired.
- 17. Local Government may order execution of drainage works by an Engineer appointed by it.

CHAPTER II.

EXPENDITURE AND APPORTIONMENT.

- 18. What amounts should be included in cost of construction.
- 19. Engineer to report progress and completion of works.
- 20. Amount to be apportioned, how to be determined.

630 The Bengal Sanitary Drainage Act, 1895. [Ben. Act 8 of 1895.]

SECTION.

21. The Collector to determine rate.

22. Rate to be published and to be paid with the road cess.

23. Share to be recovered by estate or tenure-holder.

24. Amount to be recovered by tenure-holder from raiyat.

25. Recovery of municipal portion of cost.

PART III.

CHAPTER I.

MISCELLANEOUS.

26. Drainage works subject to laws relating to public embankments.

27. Penalty for constructing weirs, etc., obstructing public drainage.
28. Lands taken and works constructed under Act to be under District Board.

29. Powers of the Commissioners, etc., in taking evidence.
30. Proceedings not to be invalidated by irregularities.

31. Local Government may empower any person to act for the Collector.
32. The Collector may delegate his authority to another.
33. Proceedings of the Commissioners and the Collector subject to control of Commissioner of Division.

34. Local Government may direct cessation of work and revision of the scheme.

CHAPTER II.

RULES.

35. Power of Local Government to make rules and to cancel them. SCHEDULE.

BENGAL ACT 8 OF 1895.

(THE BENGAL SANITARY DRAINAGE ACT, 1895.)[1]

(30th October, 1895.)

An Act to facilitate the construction of drainage works for improving the sanitary condition of local areas.

Whereas it is expedient to facilitate the construction of drainage works for improving the sanitary condition of local areas within the territories administered by the Lieutenant-Governor of Bengal,[2] and to lay down a procedure therefor, other than that provided by section 37B of the Bengal Municipal Act, 1884; [8]

Ben. Act 3 of 1884.

It is enacted as follows:-

PART I.

CHAPTER I.

PRELIMINARY.

- 1. (1) This Act may be called the Bengal Sanitary Drainage Act, short title and extent. 1895.
- (2) Except as hereinafter otherwise provided, it shall extend to all the territories administered by the Lieutenant-Governor of Bengal, [2] which are not included within the limits of any municipality.
 - (3) (Commencement). Rep. by the Amending Act, 1903 (1 of 1903).
- 2. In this Act, unless there be something repugnant in the subject Definitions. or context,-
 - (a) "cultivating raiyat" shall have the meaning attached to it in the Cess Act, IX (B. C.) of 1880:[4]

see s. 1 (2), but its application is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

[2] This includes the present Province of Bihar and Orissa except the district of

Sambalpur. [3] Bengal Act 3 of 1884 has been repealed and re-enacted by the Bihar and Orissa

Municipal Act, 1922 (B. & O. Act 7 of 1922), printed in Vol. III of this Code. [4] Printed ante, p. 369.

631

^[1] LEGISLATIVE PAPERS.--For Statement of Objects and Reasons, see Calcutta Gazatte, 1894, Pt. IV, p. 10; for Report of Select Committee, see ibid, 1895, Pt. IV, p. 30; and for Proceedings in Council, see ibid, 1894, Supplement, pp. 241 and 335, ibid, 1895, Supplement, pp. 149, 328, 753, 1176, 1180, 1346 and 1446.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengal—

1 (2) hpt its application is harved in—

(Sec. 3.)

- (b) "estate" shall have the meaning attached to it in the Cess Act, IX (B. C.) of 1880:[1]
- (c) "holder of an estate or tenure" shall have the meaning attached to it in the Cess Act, IX (B. C.) of 1880:[1]
- (d) "local area" means the portion of a district or districts within which a rate is to be levied, in order to liquidate the cost of a scheme adopted by a District Board:
- (e) "tenure" shall have the meaning attached to it in the Cess Act, IX (B.C.) of 1880:[1]
- (f) "the Collector" means, except as hereinafter provided the officer in charge of the revenue jurisdiction of the district within which the lands, which form the subject of a scheme under this Act, are situated:
- (g) "the Commissioners" means the Drainage Commissioners under this Act:
- (h) "the Engineer" means the District Engineer or any Engineer especially appointed by the Local Government to perform the functions of an Engineer under this Act:
- (i) "tract" means the portion of a district or districts throughout which the Commissioners are authorized to exercise the functions conferred on them under this Act.

CHAPTER II.

APPOINTMENT OF THE COMMISSIONERS.

- Appointment of "the through the Collector and the Commissioner of the Division reporting that they believe that the sanitary condition of any tract within their jurisdiction has been deteriorated by the obstruction of drainage, whether from natural or artificial causes, the Local Government may—
 - (a) issue, if it think fit, an order indicating approximately the area of the tract affected and prescribing the appointment of a number of persons, not less than nine, to be the Drainage Commissioners;
 - (b) direct the District Board to elect not less than half of such number from among the members of the District or Local Board as the case may be;

^{[1],} Printed ante, p. 369.

(Secs. 4-6.)

- (c) appoint the remainder of the Commissioners from among the holders of estates and tenures in the tract affected or from among the managers on behalf of such holders.
- (2) The Commissioners so created shall elect one of their number to act as Chairman.
- 4. (1) When an affected tract referred to in the last preceding section Procedure includes lands subject to the jurisdiction of more than one local author-local authority, the Local Government, by an order made on the application of any rities are District Board concerned, may constitute a joint Committee to be elected interested. by all the local authorities concerned; the number to be elected by each being determined by the Local Government as far as possible in proportion to the interest of such local authority in the tract affected.

- (2) The Local Government may further confer on any Committee so constituted, or on such of them as may be specified in the order, all the powers of a District Board under this Act; and such order may contain such provisions respecting the proceedings of any such Committee, as may seem proper, and may provide for the payment by the local authorities represented thereby of the expenses incurred by any such Committee and for the audit of their accounts.
- 5. The Local Government may from time to time accept the Resignation of "the resignation of any of the Commissioners, or may add to their number; Commisand in the event of any Commissioner dying, retiring or ceasing to reside sioners". in the district, in which such tract is situated, the vacancy so caused shall thereupon be filled by appointment or by election, as the case may be; the conditions of the original appointment or election being in each case strictly observed:

Provided that not less than half the number of the Commissioners shall always be members of the District or Local Board, as the case may be.

PART II.

CHAPTER I.

DRAINAGE SCHEME.

6. (1) When the Commissioners have been appointed under section The Commis-3 or section 5, they shall, without delay, direct the Engineer to prepare sioners to direct a survey, plans and estimates (hereinafter called "the survey") for the survey, restoration or improvement of the drainage of the tract found by him to etc., and forward be affected, and such survey shall be drawn up in accordance with rules survey and to be framed under section 35 (1) (a).

preliminary

On the completion of the survey the Commissioners shall, within the a period to be fixed by the District Board which made the application Collector. (hereinafter called "the District Board"), forward the same to the Collector of the district within which the tract affected, or the principal

(Secs. 7-8.)

part of it, is situated, together with a report (hereinafter called "the preliminary scheme '') containing-

- (a) a statement descriptive of the proposed undertaking, and showing how the drainage is obstructed, with a map of the tract affected:
- (b) an estimate of the total cost of the undertaking, including the cost of any land to be acquired under section 16;
- (c) an estimate of the annual cost of maintaining the works:

Provided that, if the tract affected includes any municipal area, the estimate to be framed under clauses (b) and (c) of this section shall show separately the portion of the cost under each clause, which will be incurred in respect of such municipal area:

Provided further that, if one or more Municipalities fall within the tract, a separate estimate shall be framed of the cost of constructing and maintaining such portion of the works as lies within the area of any such Municipality.

- (2) The Collector shall thereupon cause to be prepared—
 - (d) a statement showing the valuation for cess purposes of the lands included in the tract affected, and the total amount of cesses actually payable on the same;
 - (e) an estimate showing the rate bearing a definite proportion to the road cess payable direct to Government, which would provide for the payment with interest in the course of thirty years of the amount under clause (b) and the capitalized value of the amount under clause (c) of this section, excluding the portion to be incurred in respect of the municipal area, if any.

The Collector to publish notification.

7. As soon as possible after the receipt of the survey and preliminary scheme, the Collector shall publish in every village in the tract affected a notification in the language of the district, calling for objections.

Such notification shall be in the form in the Schedule hereto annexed, and may be published by posting the same at each post office and police-station within such tract and in some conspicuous part of each village and at the Court of the Munsif within whose jurisdiction such village, or any part thereof is situated.

The Comconsider the survey, preliminary scheme and objections and report thereon.

8. As soon as practicable after the expiry of the period fixed by such missioners to notification, the Collector shall forward to the Commissioners the survey and preliminary scheme, together with the petitions of objection, if any, received by him, and shall call upon them to consider such survey and preliminary scheme together with such objections, and within a specified time to forward such survey and preliminary scheme to the Chairman (Secs. 9-12.)

of the District Board together with their report upon the objections, if any, as well as upon the state of public feeling in regard to such survey and preliminary scheme, and their advice as to their adoption or rejection.

9. On receipt of such survey and preliminary scheme, the District District Board shall within one month's time proceed to take them into Board to consideration at a meeting specially called for the purpose.

survey and preliminary scheme.

10. If the District Board reject such survey and preliminary scheme, Procedure, the cost of such survey and the salary, if any, of the Engineer directed if survey and preliminary to prepare the same shall be paid by the District Board.

scheme are rejected.

11. If at such meeting, a majority of the members present acting Procedure, if on the advice of the Commissioners, or, with the approval of a majority survey and of not less than two-thirds of such members (such meeting to consist of scheme are not less than one-half of the total number of the members of the Board), adopted. acting against the advice of the Commissioners, adopt the survey and preliminary scheme, they shall revise the preliminary scheme in the following manner:-

- (i) they shall deduct from the aggregate amount estimated under clauses (b) and (c) of section 6 the sums, if any, which have been either anticipated or promised as private subscriptions or contributed by the District Board, or provisionally promised by the Local Government;
- (ii) they shall thereupon submit the preliminary scheme so revised, together with the survey and the report prepared by the Commissioners under section 8, to the Collector.
- 12. The Collector shall thereupon:—

Procedure

- (a) calculate the amount, which, if expressed as a rate bearing to be followed by the a definite proportion to the road cess leviable within Collector. the tract affected, would pay off the balance in equal annual instalments within thirty years (such instalments being fixed), so as to provide for the payment of interest on any sums borrowed from Government or the public;
- (b) forward such survey and preliminary scheme through the Commissioner of the Division to the Local Government for consideration:

Provided that, if the instalments so fixed shall exceed the amount annually payable as road cess within the tract affected, the Collector shall return such preliminary scheme to the District Board for further consideration.

(Secs. 13-17.)

" Scheme " and "local area."

13. The "survey and preliminary scheme" thus adopted or modified shall be hereinafter called the "scheme" and the tract within which the new drainage rate is to be imposed shall be hereinafter called the " local area".

Powers of Local Government.

14. The Local Government shall consider the scheme thus adopted or revised, together with the report of the Commissioners, and may approve, modify or reject the same; and if it approve or modify the scheme, it shall thereupon return it, so approved or modified, to the District Board through the Commissioner of the Division, with an intimation of the amount, which the Local Government will contribute towards the scheme:

Provided that, if the modification adds materially to the cost of the operations, the scheme thus modified shall again be laid before the District Board for their consideration.

District Board may re-consider scheme, etc., adopted by them.

- 15. (1) The District Board may, with the previous consent of the Local Government, at any time re-consider the scheme adopted by them, and add to, alter or modify the same; and if any addition, alteration or modification is thereupon made by them, they shall lay before the Local Government the scheme so added to, altered or modified, and the Local Government may sanction the same or any portion thereof; and thenceforth the provisions of this Act shall apply to the scheme as ultimately sanctioned by the Local Government.
- (2) Every material addition, alteration or modification made by the Local Government or by a District Board to, or in, any scheme after the adoption thereof, shall be published in the manner provided in section 7, and the provisions of sections 8 to 12 (both inclusive) shall apply.

Land required for drainage works how to be acquired.

16. Any land, likely to be needed in carrying out any scheme, sanctioned by the Local Government under this Act, may be acquired under the provisions of the Land Acquisition Act, 1894, [1] or any similar 1 of 1894. Act for the time being in force for the acquisition of land for public purposes:

Provided that no compensation shall be paid for land recorded as a water-course in the last revenue survey map published under section 4 of Act 9 of 1847[2] or any similar enactment for the time being in force, unless it be proved that such land has been under cultivation for a period of not less than twelve years previous to the acquisition.

Local Government may order execution of drainage works by an Engineer appointed

by it.

17. (1) All works under this Act shall be executed by the District Board, unless the Local Government order such works, or any portion of them, to be executed by more than one District Board or by an Engineer appointed in that behalf by itself.

^[1] Printed in the General Acts, 1887-97, Ed. 1928, p. 213. [2] The Bengal Alluvion and Diluvion Act, 1847. It is printed in Vol. I of this Code.

(Secs. 18-20.)

(2) Any person duly authorized to execute any works under this Act may himself, or by his agents and workmen, enter into or upon any lands forming part of the local area, and carry out such works thereupon as may be required.

CHAPTER II.

EXPENDITURE AND APPORTIONMENT.

18. All amounts paid—

(a) as compensation for any lands taken for the purposes of this What

(b) as salaries of the Engineer, officers, servants or establishments included

specially employed by the Collector, the Commissioners or in cost of construction. the District Board for the purposes of this Act; (c) for any surveys, plans, estimates, valuations and incidental

expenses connected therewith, whether antecedent subsequent to the adoption of the scheme, together with all amounts expended in carrying out the purposes of this

Act, shall be included in, and be deemed to constitute, the cost of construction of works.

19. (1) The Engineer shall, once in every three months, until the Engineer to works shall be finally completed, submit to the District Board a detailed report proreport showing the progress of the works and the amount expended completion thereon up to date from the commencement of the work or from the date of works. of the last report; and when the works are completed and the accounts closed, he shall submit to the District Board a final report showing the total cost.

- (2) If the local area includes areas subject to the jurisdiction of more than one local authority, the proportion of such cost shall be defrayed by each local authority as far as possible in proportion to their interest in the work executed.
- (3) The District Board shall forward a copy of this report to the Local Government through the Commissioner of the Division, with such remarks as to them shall seem fit, and in the event of any local authority objecting to the proposed apportionment, the Local Government shall determine the proportion to be paid by them. The decision of the Local Government thereon shall be final.
- 20. The total cost of construction mentioned in section 18 shall be Amount to ascertained by adding together-

(a) the actual amount expended;

be apportioned how to be determined.

(Secs. 21-25.)

- (b) the interest payable on the loans under the Local Authorities Loans Act, 1879,[1] if any;
- (c) the capitalized value of the estimated cost of maintenance.
- From this sum shall be deducted the amounts subscribed or contributed as contemplated in sections 11 and 14.

The Collecmine rate.

21. On receipt of the final report mentioned in section 19, the tor to deter-District Board shall require the Collector, within three months, to determine the amount of rate, which shall be collected with the road cess annually payable direct to Government within the local area, and shall be sufficient to provide for the payment of the cost of construction as defined in section 20, in the course of not more than thirty years, excluding the portion to be incurred in respect of the municipal area, if any.

Rate to be published and to be paid with the road cess.

22. (1) The rate so determined shall be published as provided in section 40 of the Cess Act, 1880; [2] and shall be paid together with the Ben. Act 9 road cess payable by those liable to pay such cess direct to Government of 1880. within the local area, until such time as the period of not more than thirty years from the date of publication shall have expired, or the cost of construction of the works has been liquidated.

11 of 1879.

(2) All arrears of such rates shall be recoverable under the law[3] for the time being in force for the recovery of public demands.

Share to be estate or tenureholder.

23. Any holder of an estate or tenure, who shall pay to the Collector recovered by any instalment of such rate payable under the last preceding section shall be entitled to recover half the amount of the instalment so paid from the holder of a tenure or cultivating raiyat holding lands within the local area under such holder of an estate or tenure in the same proportion and in the same manner as he is entitled to recover road cess or public works cess, payable under the provisions of the Cess Act, 1880. [2]

Ben. Act 9 of 1880.

Amount to by tenureholder from raiyat.

24. Any holder of a tenure, who shall pay to the holder of an estate be recovered or tenure the sum due to such holder under the last preceding section, shall be entitled to recover half the sum so paid from the cultivating raiyats holding lands within the local area under such holder of a tenure, in the same proportion and in the same manner, as he is entitled to recover road cess or public works cess, payable under the provisions of the Cess Act, 1880. [2]

Ben. Act 9 of 1880.

Recovery of municipal portion of cost.

- 25. (1) When the local area includes a municipal area, the amount payable under section 19 shall be defrayed by the municipality.
- (2) In order to provide for the payment with interest of such municipal share at the rate payable to Government by the District Board within a period of not less than thirty years, the amount required may

^[1] Act 11 of 1879 has been repealed and re-enacted by the Local Authorities Loans Act, 1914 (9 of 1914), in General Acts, 1914-20, Ed. 1928, p. 68, and this reference should now be construed as a reference to the latter Act-see the General Clauses Act, 1897 (10 of 1897), s. 8, in General Acts, 1887-97, Ed. 1928, p. 343.

^[3] Printed ante, p. 369."
[3] See the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), printed in Vol. III of this Code.

(Secs. 26-30.)

be raised by an additional rate to be added to the tax upon persons or to the rate on the annual value of holdings as the case may be.

PART III. CHAPTER I.

Miscellaneous.

26. All outlets and water-channels, natural or artificial, which shall Drainage be cleared, altered, enlarged, excavated or cut under the provisions of works subthis Act, and the construction and maintenance of embankments and relating to dams and works therein or connected therewith, shall be subject to the bankments. law[1] for the time being in force regulating the construction and maintenance of public embankments, rivers, channels and outlets.

27. (1) Any person who, without lawful authority, erects, or causes Penalty for to be erected, any weir or other obstruction in any outlet or water-constructing channel, or cultivates the bed of a water-channel, so as to obstruct obstructing natural drainage, shall, upon conviction before a Magistrate, be liable public to a penalty not exceeding two hundred rupees for every such offence.

- (2) It shall be in the discretion of such Magistrate to direct any such offender to remove and pay for the entire cost of the removal of any such obstruction.
- . 28. All lands which are taken under the provisions of this Act for Lands taken the purpose of the construction of works therein or thereon, and all and works constructed works constructed under the provisions of this Act, as well as all outlets, under Act to water-channels, embankments and dams so constructed, cleared, altered, be under District enlarged, excavated or cut, shall be under the control and administration Board. of the District Board.

29. The Commissioners, the Collector, and the Commissioner of the Powers of Division shall have all such powers as are conferred on Civil Courts by the Commisthe Code of Civil Procedure [2] for the purpose of compelling the in taking attendance of witnesses and the production of evidence, and for the purpose of examining witnesses in any inquiry or appeal, which they may be empowered to make or entertain under the provisions of this Act.

30. No proceeding under this Act shall be defeated or invalidated Proceedings by reason of any defect or omission in the publication or service of any not to be notification, notice or order, unless material injury is done to any person invalidated by irregularby such defect or omission.

14 of 1882.

^[1] See—the Bengal Embankment Act, 1855 (32 of 1855), in Vol. I of this Code; the Bengal Embankment Act, 1866 (Ben. Act 7 of 1866), printed ante, p. 59.

the Bengal Embankment Act, 1873 (Ben. Act 6 of 1873), printed ante, p. 161.

the Bengal Embankment Act, 1882 (Ben. Act 2 of 1882), printed unte,

^[2] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code-see s. 158 thereof.

(Secs. 31-35.)

Local Government may empower any person to act for the Collector.

31. The Local Government may specially empower any person to do all such acts, to discharge all such functions, and to exercise all such powers as may be done, discharged or exercised by a Collector under this Act; and on any person being so specially empowered, such person may do all such acts, discharge all such functions, and exercise all such powers, and such person shall be deemed to be the Collector for the purposes of the scheme, in respect of which he is so specially empowered.

The Collector may delegate his authority to another.

- 32. (1) The Collector may, with the sanction of the Commissioner of the Division, delegate to any Deputy or Assistant Collector, the performance of any acts or the discharge of any functions which the said Collector may perform or discharge under this Act.
- (2) Upon such delegation, such Deputy Collector or other officer may do such acts, discharge such functions, and exercise such powers for the performance of the same, as the Collector may exercise under this Act:

Provided that all acts done, functions discharged, and powers exercised by such officer, shall be done, discharged, or exercised subject to the control and supervision of the Collector.

Proceedings of the Commissioners and the Collector subject to control of Commissioner of Division.

33. Notwithstanding anything hereinbefore contained, all the proceedings of the Commissioners and of the Collector under this Act shall be subject to the general control and supervision of the Commissioner of the Division, or, when the tract or local area affected comprises land situated in more than one Division, of such Commissioner as the Local Government may direct.

Local Government may direct cessation of work and revision of the scheme.

34. If at any time the Local Government is satisfied that the cost of any scheme of works, including the cost of maintenance, has been erroneously estimated, it may direct that the scheme be no further proceeded with, until the same has been revised.

CHAPTER II.

RULES.

Power of Local Government to make rules and to cancel them.

35. (1) It shall be lawful for the Local Government, from time to time, to make, and, when made, to alter or repeal rules not inconsistent with this Act for the purpose of—

(a) prescribing the forms of accounts, surveys, plans, estimates, periodical statements and reports;

- (b) regulating the conduct of business at the meetings of the Commissioners;
- (c) regulating the instalments by which and the mode in which sums payable under this Act shall be paid;
- (d) regulating the carrying out and maintenance of works, when one or more local authorities are concerned;
- (e) ascertaining the capitalized value of the estimated cost of maintenance of drainage works;

(Sec. 35. Schedule.)

- (f) providing for professional supervision over the preparation of surveys, plans and estimates, and the execution and maintenance of drainage works;
- (g) allotting the duties of the Collector under this Act among
 Collectors of different districts as may be convenient; and
 (h) generally carrying out the purposes of this Act.
- (2) The Local Government shall, before making, altering or repealing rules under this section, publish a draft of the proposed rules and alterations and a notification of the proposed repeals in three consecutive numbers of the Calcutta Gazette, and shall specify a date not less than one month from the date of publication, at or after which
- (3) The Local Government shall receive and consider any objection or suggestion which may be made by any person with respect to such draft and notification before the date so specified.

such draft and notification will be taken into consideration.

(4) Every rule so made or altered, and every repeal of any such rule under this section shall be thereafter published in the Calcutta Gazette.

SCHEDULE.

(See section 7.)

BENGAL SANITARY DRAINAGE ACT, 1895.

To all whom it may concern.

TAKE notice, that with the object of improving the sanitary condition of the country, it is proposed to restore or improve the drainage in the thanas of......district......

Copies of the plans and estimates of the work proposed, which will affect (so many) villages, are now in the office of......and may be inspected by any persons interested at any time between 11 A.M. and 5 P.M., Sundays and holidays excepted, up to and including the......day of......

It is estimated that, if the said drainage scheme is carried out, a rate will be payable by the residents of the villages affected which will be equivalent to......on every rupee now paid as Road Cess for a period of thirty years from the date of the completion of the works, unless the District Board shall decide to collect the amount within a shorter period.

Any person objecting to the execution of the said works shall submit a petition in writing, duly signed, to the Collector of......on or before the......day of......

Any person who does not object in the manner and within the time mentioned, shall be held to have assented to the execution of the works.

i

Collector.

BENGAL ACT 1 OF 1896.

(THE PROTECTION OF MUHAMMADAN PILGRIMS ACT, 1896.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Short title, extent and commencement.
- 2. Definitions.
- 3. Grant of licenses to act as pilgrim brokers.
- 4. Licenses what to specify.
- 5. Penalty for acting as pilgrim broker without a license, or for lending license.6. Penalty for misbehaviour of licensed pilgrim broker.
- 7. Power to suspend and cancel licenses.
- 8. Appointment and duties of Protectors of Pilgrims.
- 9. Power to enter ships conveying pilgrims.
- 10. Penalty for not facilitating inspection.
- 11.) (Repealed.)
- 13. Penalty for issuing tickets in excess.
- 14. Passage-tickets to be numbered consecutively and to have price marked.
- 15. Certain provisions of Native Passenger Ships Act, 1887, to apply to offences and fines under this Act.
- 16. Certain penalties to be enforced only at the instance of the Commissioner of
- 17. Construction of references to the Native Passenger Ships Act, 1887.

BENGAL ACT 1 OF 1896.

(THE PROTECTION OF MUHAMMADAN PILGRIMS ACT, 1896.)[1]

(10th June, 1896.)

An Act to provide for the protection of Muhammadan Pilgrims.

Whereasit is expedient to provide for the protection Preamble. of Muhammadan Pilgrims;

It is hereby enacted as follows:—

1. (1) This Act may be called the Protection of Muhammadan Short title, extent and Pilgrims Act, 1896;

commence

- (2) It extends in the first instance to Calcutta only; but the Local ment. Government may, by notification in the Calcutta Gazette, extend it to any other place in the Province of Bengal; [2] and
 - (3) It shall come into force—
 - (a) in Calcutta, from the date on which it may be published in the Calcutta Gazette with the assent of the Governor General, and
 - (b) in any place to which it may be extended by notification under sub-section (2) of this section, from the date specified in this behalf in such notification.
- 2. In this Act, unless there be something repugnant in the subject Definitions. or context,—
 - (a) "pilgrim" means a Muhammadan who is proceeding to or returning from the Hedjaz;
 - (b) "pilgrim broker" means a person who buys and re-sells, or sells on commission, or takes any reward for the purchase or sale of, passage-tickets, whether by sea or railway, for pilgrims;
 - (c) "agent" includes a person who has chartered a ship for the conveyance of pilgrims;

of Sambalpur.

645

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta (fazette, 1896, Pt. IV, p. 3: for Report of Select Committee, see ibid, p. 5; and for Proceedings in Council, see ibid, 1896, Supplement, pp. 406, 464, 695 and 737.

The application of the Act is barred in—
the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalour.

(Secs. 3-6.)

- (d) "Calcutta" means the area for the time being included in "Calcutta" as defined in the Calcutta Municipal Consolidation Act, 1888[1] and includes the Port of Calcutta, Ben. Act. 2 of 1888.
- (e) "Commissioner of Police" means-
 - (i) as regards Calcutta, the Commissioner of Police for that town, and
 - (ii) as regards any place to which this Act may hereafter be extended, any person whom the Local Government may appoint, by name or by virtue of his office, to perform in such place the functions of the Commissioner of Police under this Act.

Grant of licenses to act as pilgrim brokers.

- 3. (1) The Commissioner of Police shall from time to time grant licenses empowering persons to act as pilgrim brokers.
- (2) The Local Government may, from time to time, make rules to regulate the grant of such licenses and to prescribe the conditions to be embodied therein.
 - (3) All such rules shall be published in the Calcutta Gazette.

Licenses what to specify.

- 4. Every such license shall specify—
 - (a) the name and address of the licensee;
 - (b) the period for which the license is to be in force; and
 - (c) the conditions subject to which the license is granted.

Penalty for grim broker without a license or for lending license.

5. Any person who, without a license granted under section 3, acts acting as pil- as a pilgrim broker, or who lends to another person a license granted to himself under that section, shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Penalty for misbehaviour of licensed pilgrim broker.

- 6. If any licensed pilgrim broker—
 - (a) commits a breach of any of the conditions of his license; or
 - (b) purchases for or sells to any pilgrim a passage-ticket by any ship to which the Native Passenger Ships Act, 1887,[2] 10 of 1887. applies, at any time before notice has been given by the master, owner or agent of the ship under section 7 of that Act, of the time at which it is proposed that the ship shall sail; or

^[1] Ben. Act 2 of 1888 has been repealed and re-enacted by the Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899). The latter Act has again been repealed and re-enacted by Ben. Act 3 of 1923 which is printed in the Supplement to the Bengal Code, 1913-15, p. 425.

^[2] This Act has been repealed by the Indian Merchant Shipping Act, 1923 (21 of 1923), s. 296 and Sch. V, in General Acts, 1921-23, Ed. 1928, p. 381.

- (c) purchases for or sells to any pilgrim a passage-ticket by any ship unless the proposed time of sailing is printed on such ticket; or
- (d) charges any pilgrim a sum in excess of the cost price of any passage-ticket, or of any provisions or other articles, purchased for him, or receives from him any fee or commission on account of any such ticket; or
- (e) receives from the master, owner or agent of any ship, or from any railway-servant, any fee or commission in respect of the sale of any passage-ticket for a pilgrim, exceeding five per centum of the price of such ticket: or

(f) purchases for any pilgrim a passage-ticket on which there is not printed or stamped the price charged for the passage according to the class of accommodation secured; or

(g) by fraud or false representation, or by any false pretence whatever, induces any person to purchase a pilgrim's passage-ticket.

he shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

7. The Commissioner of Police may—

Power to

- (a) suspend the license of any pilgrim broker pending any suspend and inquiry into any accusation against him of misconduct for licenses. which, if proved, he would be liable to fine under section 6, and
- (b) cancel the license granted to any pilgrim broker who is convicted of any offence under this Act or of any other criminal offence.
- 8. (1) The Local Government may, from time to time, appoint any Appointpersons, being Muhammadans, to be Protectors of Pilgrims for Calcutta ment and duties of or for any place to which this Act may hereafter be extended. Protectors of

(2) Every Protector of Pilgrims shall, for the purposes of this Act, Pilgrims. be subordinate to the Commissioner of Police, and shall aid the Commissioner in giving effect to the provisions of this Act, shall advise and generally assist pilgrims during their stay in the place for which the Protector is appointed, and shall exercise supervision over the proceedings of all licensed pilgrim brokers therein.

9. Any Protector of Pilgrims, or any person authorized by the Power to Commissioner of Police in this behalf, shall be at liberty at all times to conveying enter and inspect any ship advertised or offered to convey pilgrims from pilgrims. the Port of Calcutta or any place to which this Act may hereafter be extended.

(Secs. 10-17.)

Penalty for not facilitating inspection.

- 10. If the master or any officer of any such ship does not afford every reasonable facility for such inspection, he shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.
- 11,12. [Information to be supplied by master, owner or agent of ship conveying pilgrims. Penalty for refusal or omission to give information, or for giving false information.] Repealed by the Indian Merchant Shipping (Amendment) Act, 1927 (14 of 1927).

Penalty for issuing tickets in excess.

13. Whoever, as master, owner or agent of any such ship, issues any passage-ticket for a pilgrim in excess of the number allowed by Certificate A granted under the Native Passenger Ships Act, 1887,[1] 10 of 1887. shall, for every passage-ticket so issued, be liable, on conviction, to fine which may extend to four times the original cost price of such ticket.

Passagetickets to be numbered consecutively and to have price marked.

- 14. (1) All passage-tickets for pilgrims shall be numbered consecutively according to the order of issue, and shall have printed or stamped thereon the price charged for the passage.
- (2) Whoever, as master, owner or agent of any ship, issues two or more of such tickets bearing the same number, or issues any such ticket on which the price charged for the passage is not printed or stamped, shall, on conviction, be liable to fine which may extend to two hundred rupees for each offence.

Certain provisions of Native Passenger Ships Act, 1887, to apply to offences and fines under this Act.

15. Sections 46, 47 and 49 of the Native Passenger Ships Act, 1887,[1] shall apply, throughout the territories under the administration 10 of 188 of the Lieutenant-Governor of Bengal,[2] to all offences punishable and fines leviable under this Act.

Penalties to be enforced only at the instance of the Commissioner of Police.

16. The penalties to which masters, owners and agents of ships are made liable by this Act shall be enforced only on information laid at the instance of the Commissioner of Police.

Construction of references to the Native Passenger Ships Act, 1887.

17. From the day on which the Pilgrim Ships Act, 1895,[3] comes into force, the references in this Act to the Native Passenger Ships Act, 1887,[1] shall be read as if made to the corresponding provisions of the 10 of 1887. said Pilgrim Ships Act.

^[1] See footnote [2] on p. 646, ante.

^[2] This includes the present province of Bihar and Orissa except the district of Sambalpur.

^[3] This Act has been repealed by the Indian Merchant Shipping Act, 1923 (21 of 1923), s. 296 and Sch. V, in General Acts, 1921-23, Ed. 1928, p. 381.

BENGAL ACT 3 OF 1897.

(THE BENGAL RAIN-GAMBLING ACT, 1897.)

CONTENTS.

PREAMBLE.

SECTION.

- 1. Short title and commencement.
- 2. Amendment of Ben. Act 4, 1866, section 3.
- 3. Amendment of Act 21 of 1857, section 59.
- 4. Amendment of Ben. Act 2, 1867, section 1.

BENGAL ACT 3 OF 1897.

[THE BENGAL RAIN-GAMBLING ACT, 1897.][1]

(26th May, 1897.)

An Act for the suppression of Rain-gambling in common gaming-houses.

Whereas it is expedient to amend the law in force in Bengal so as to secure the suppression of the practice of rain-gambling in common gaming-houses; It is hereby enacted as follows:-

1. (1) This Act may be called the Bengal Rain-gambling Act, 1897; Short title and

and commence-

- (2) It shall come into force on the day[2] on which it is first ment. published in the Calcutta Gazette after having received the assent of the Governor-General.
- (3) Section 4 shall further be deemed to be in force on and from the said day in every city, town or place to which Bengal Act 2 of 1867[3] (an Act to provide for the punishment of public gambling and the keeping of common gaming-houses in the territories subject to the Lieutenant-Governor of Bengal), or any part thereof, has before that day been extended by notification under its second section.

2, 3, [4]

4. (1) To the definition of "common gaming-house" in section 1 Amendof Bengal Act 2 of 1867[3] (an Act to provide for the punishment of ment of Ben. Act 2 public gambling and the keeping of common gaming-houses in the Act 2, of 1867. territories subject to the Lieutenant-Governor of Bengal) the following 1867, shall be added, namely:—

section 1.

[Printed ante, p. 67.]

(2) After the said definition the following shall be inserted, namely :—

[Printed ante, p. 68.]

in the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3(2), printed in Vol. I of this Code, and

in the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. 1 of this Code.

[2] i.e., the 26th May 1897.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1897, Pt. IV, p. 36; for Report of Select Committee, see ibid, p. 37; and for Proceedings in Council, see ibid, Supplement, 1897, pp. 1203, 1266 and 1699. The application of the Act is barred-

^[3] Printed ante, p. 67. [4] Ss. 2 and 3 have been omitted as they amend Acts which do not apply to Bihar and Orissa,

BENGAL ACT 5 OF 1897.

(THE ESTATES PARTITION ACT, 1897.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

- Short title, extent and commencement.
 Repeal and savings.
 Definitions.

CHAPTER II.

RIGHT TO CLAIM PARTITION.

- 4. Who entitled to claim partition.
- 5. Partition according to interest.
 6. Separation of land held in common between the proprietors of two or more estates, when the estates are not under partition.
 7. Partition of lands under Act where a partition has been made by private
- arrangement.
- 8. Tenants for life not entitled to claim partition.

CHAPTER III.

SECURITY OF THE LAND-REVENUE.

- 9. Future partitions not to relieve land from liability for total land-revenue, unless made as provided in this Act.
- 10. Amount of land-revenue to be assessed on each separate-estate.
- 11. Restrictions on partition of estate with reference to land-revenue.
- Execution of decree for partition.
 Power to refuse partition which would result in formation of estates scattered so as to endanger the safety of the land-revenue.
 Interest alienated with special condition as to liability for land-revenue.

- 15. Sale, for arrears of land-revenue, of an estate which is under partition.

 16. Sale, for arrears of land-revenue, of share in an estate which is under partition.

CHAPTER IV.

INITIATION AND DISCONTINUANCE OF PARTITION PROCEEDINGS.

- 17. Application for partition how to be made.
 18. Application to be signed and to contain certain particulars.
 19. Application to be accompanied by copy of rent-roll and by specification of previous measurements and record-of-rights.
- 20. Procedure if application is not in order.

- 21. Notification and notice of application.
 22. Power to reject application on receipt of objection.
 23. Procedure when objection raises any question of right or title or of extent of interest.

SECTION.

24. Resumption of proceedings after postponement.

25. Suits instituted after four months not to affect or stay proceedings for partition.

26. Decree made while partition proceedings are in progress.

27. Decree made after partition proceedings are in progress.
27. Decree made after partition proceedings completed.
28. Power of Civil Court to order partition on application being made to Collector.
29. Admission of application for partition, and procedure thereupon.
30. Subsequent application for separation of another share.
31. Power of Collector to refer application for partition to Deputy Collector.
32. Power of Collector to appoint Deputy Collector to carry out partition.
33. Power to strike partition case off the file, on petition of parties.

Recovery of costs.

34. Power of Commissioner to strike partition case off the file. Recovery of costs.

CHAPTER V.

ESTABLISHMENTS AND COSTS.

35. Power to appoint establishments and prescribe scale of remuneration.

36. Power to appoint special establishment.

37. Estimating and levy of cost of partition.
38. Apportionment of cost of partition.
39. Power of Deputy Collector to declare cost of local inquiry and by whom it is

40. On completion of partition, total cost to be declared and account adjusted.
41. Power to direct that salary of Deputy Collector, and cost of special establishment, be recovered as part of costs of partitions. 42. Estates Partition Fund.

43. Order by Civil Court for payment by parties of costs of partition.

CHAPTER VI.

PROCEEDINGS UP TO THE DETERMINATION OF THE PARTITION.

44. Powers of Deputy Collector in making a partition.
45. Deputy Collector when to make survey and prepare record of existing rents and assets.

46. Particulars to be recorded.

47. Attestation of survey papers and record of existing rents and assets.

48. Publication of survey papers and record of existing rents and assets.
49. Power of Deputy Collector to accept previous survey, record-of-rights, measurements or rent-rolls, instead of making a new survey and a record of existing rents and assets.

50. Record of order, fixing of day for determining partition, and service of notices.

CHAPTER VII.

PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

51. Power to allow partition to be made by proprietors themselves, or by arbitrators.

52. Procedure on reference to arbitration.
53. Arbitrators to deliver a partition paper.
54. Remuneration of arbitrators.
55. Approval of Collector and other authorities.

56. Assessment of land-revenue.

CHAPTER VIII.

MAKING OF PARTITION BY THE DEPUTY COLLECTOR, AND APPROVAL THEREOF BY THE COLLECTOR. ٠. .

- 57. Procedure where no petition presented under section 51.
- 58. Submission of case to Collector; his duties.

SECTION.

- 59. Duties of Deputy Collector when partition has been approved by Collector or when Collector makes a new partition.
- 60. Proprietor not appearing on fixed day not entitled to make objection.
- 61. Submission of the papers to the Commissioner after approval of the partition by the Collector.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

Lands held in common tenancy.

- 62. Separate estates to be made compact.
- 63. Circumstances to be considered in making partitions.
- 64. Rights when dwelling-house belonging to one proprietor is situated on land to be allotted to another proprietor.
- 65. Power to apply section 64 to gardens, etc.
 66. Rent for land fixed under section 64 or 65 deemed to be the assets of the land.
- 67. Redemption of rent fixed under section 64.
- 68. Amount payable in redemption of rent.
- 69. Such amount when payable.
 70. Notice of payment to be given, and land to be held rent-free.
- 71. Collector to register the rent-free tenure. 72. Drawing of lots for equal shares.
- 73 Order and method of drawing lots when aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares.
- 74. Deputy Collector may require proprietors to attend or appoint agent for the purpose of drawing lots.
- 75. In default, Deputy Collector may appoint a person to draw lots.

Lands held in severalty.

- 76. Partition according to separate possession, and apportionment of land-revenue.
- 77. Lands of which each proprietor is in possession to be allotted to him.
- 78. Collector may cause transfer of lands agreed to by parties.

Lands held in common tenancy and Lands held in severalty.

- 79. Places of worship, etc.

- 80. Tanks, wells, water-courses, reservoirs and embankments.
 81. Splitting up of tenure or holding, and apportionment of rent thereof.
 82. Land held rent-free not to be divided, except with consent of recorded proprietors.
 83. Land held at fixed rent on permanent intermediate tenure.
- 84. Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.
- 85. When proprietors of other estates may be required to pay a portion of the costs of making a division under section 84.
- 86. Allotment made under section 84 to be submitted to the Collector.
- 87. Land so allotted how to be dealt with.
- 88. Procedure when dispute or doubt exists as to whether any land forms part of a parent estate.
- 89. Procedure when partition completed in pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

CHAPTER X.

PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF A PARTITION.

- 90. Procedure if proceedings require amendment or if appeal or objection presented.
- 91. Procedure in other cases.
- 92. Commissioner may return the papers for amendment or inquiry as often as he thinks fit.
- 93. Procedure by Collector on receipt of Commissioner's order confirming, or Board's order sanctioning, a partition.
- 94. Procedure as to giving possession of separate estates.
- 95. Each separate estate to be borne on the revenue-roll and General Register as separately liable for the land-revenue assessed upon it.
- 96. Boundary marks.

CHAPTER XI.

MISCELLANEOUS.

SECTION.

- 97. Powers of Deputy Collector as to production of documents and attendance of
- 98. General power to refer to arbitration.
- 99. Saving of tenures, leases and incumbrances.
- 100. Uniting of estates.
- 101. If separate estate fall into arrear, Collector to inquire into cause and report to Commissioner.
- 102. Power of Lieutenant-Governor to order a new allotment of the land-revenue.
- 103. Power to require proprietors of under-assessed estates to make refund to proprietors of over-assessed estates.
- 104. Publication of notifications.
- 105. Service of notices.
- 106. Mistakes and irregularities not to vitiate proceedings. 107. Fine in case of non-compliance with requisition.
- 108. Fees, etc., to be recoverable as public demands.
- 109. Powers and functions of Deputy Collector may be exercised by Collector.
 110. Power to vest Collector or Deputy Collector with settlement powers.
 111. Appeals to the Collector, and admission by him of objections.
 112. Appeals to the Commissioner, and admission by him of objections.
 113. Appeals to the Board.
 114. Limitation of appeals; revision by Board; further appeal to Board.
 115. Stay of proceedings pending appeal or revision.
 116. Revision of proceedings connected with giving possession.
 117. Orders as to costs on appeal.

- 117. Orders as to costs on appeal.
- 118. Powers of officers exercising jurisdiction under this Act with regard to false evidence of forgery.
- 119. Certain orders under this Act not liable to be contested or set aside by civil suit.
- 120. Board to be guided by orders or instructions of Lieutenant-Governor. 121. Power of Board to make rules.

BENGAL ACT 5 OF 1897.

(THE ESTATES PARTITION ACT. 1897.)[1]

(8th December, 1897.)

An Act to amend the law relating to the Partition of Estates.

Whereas it is expedient to amend the law relating to the partition of estates:

And whereas the sanction of the Governor General of India has been 55 and 56, obtained, under section 5[2] of the Indian Councils Act, 1892, to the Vict., c. 41. provisions contained in section 12 of this Act amending the Code of 14 of 1882. Civil Procedure; [3]

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

1. (1) This Act may be called the Estates Partition Act, 1897;

Short title extent and

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta ment [1] Legislative Papers.—For Statement of Objects and Reasons, see Calcutta Gazette, 1896, Part IV, p. 34; for Preliminary Report of Select Committee, see ibid, 1897, Pt. IV, p. 41; and for Proceedings in Council, see ibid, 1896, Supplement, pp. 695, 741, 2900; ibid, 1897, Supplement, pp. 137, 160, 1687, 3364 and 4023. The final Report of Select Committee was not published in the Calcutta Gazette.

Local Extent.—This Act extends to the whole of the former Province of Bengal—see s. 1(2), but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code.

It is in force in the Sonthal Parganas—see Vol. IV, Part IV.

Annotated Reprint.—For an annotated reprint of this Act, see the Bihar and Orissa Batwara Manual, 1917.

Other Enactments.—For a general Act amending the Law in British India as to partition, see the Partition Act, 1893 (4 of 1893), in General Acts, 1887-97, Ed. 1928,

partition, see the Partition Act, 1893 (4 of 1893), in General Acts, 1887-97, Ed. 1928, p. 209. That Act does not affect any local law providing for the partition of immovable

property paying revenue to the Government—see s. 1 (4) thereof.

As to Commissions to make partition under the Code of Civil Procedure, 1908 (5 of 1908), see rules 13 and 14 in Order XXVI in Schedule I to that Code. That Code does not affect any local law providing for the partition of immovable property—see

s. 4, ibid.

For power to make partition at settlement, see the Bengal Land-revenue Settlement Regulation, 1822 (7 of 1822), s. 12, in Vol. I of this Code.

Joint proprietors who are dissatisfied with an offer of settlement are entitled to claim partition—see the Bengal Decennial Settlement Regulation, 1793 (8 of 1793), s. 26, in Vol. I of this Code.

As to the assessment of land-revenue on separated estates, see the Bengal Leases and Land-revenue Regulation, 1812 (18 of 1812), s. 3 (2), in Vol. I of this Code.

Ben. Act 5 of 1897 is not affected by the Bengal Tenancy Act, 1885—printed in

Vol. I of this Code—see s. 195 (d) thereof.

[2] See now s. 80A(3) of the Government of India Act.

[3] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Proce-

dure, 1908 (5 of 1908).

657

(Secs. 2-3.)

- (2) It extends to the territories for the time being under the administration of the Lieutenant-Governor of Bengal; [1] and
- (3) It shall come into force on the day[2] on which it is first published in the Calcutta Gazette after having received the assent of the Governor General.

Repeal and savings.

- 2. (1) On and from that day the Estates Partition Act, 1876, shall Ben. Act 8 of 1876. be repealed. But—
 - (a) this repeal shall not affect the previous operation of the said Act, or anything duly done or suffered thereunder, or any fine incurred thereunder;
 - (b) where in-any pending case an order under section 63 of the said Act was made before the said day, the subsequent proceedings shall, unless all the proprietors request otherwise, be carried on under the said Act, as if this Act had not been passed;
 - (c) subject to clause (b) of this section, all pending proceedings which have been commenced under the said Estates Partition Act, 1876, before the said day, shall be carried on under this Act, save that, where in any case the Collector has before that day directed that an application for partition be admitted, section 11 of the said Estates Partition Act, 1876, shall apply instead of clauses (a) and (b) of section 11 of this Act.
- (2) Any enactment or document referring to the said Estates Partition Act, 1876, or to any enactment repealed thereby, shall, so far as may be, and subject to sub-section (1) of this section, be construed to refer to this Act or to the corresponding portion thereof.

Definitions.

- 3. In this Act, unless there be something repugnant in the subject or context.—
- (i) [3]" Board" means the Board of Revenue for the territories for the time being under the administration of the Lieutenant-Governor;
- (ii) "Collector" means the Collector of the district on the revenueroll of which an estate which is under partition, or which it is proposed to bring under partition, is borne, and includes—
 - (a) any officer whom the Board [3] generally vests (as it is hereby empowered to do) with the powers of a Collector under this Act, and to whom the Collector has, with the sanction of the Commissioner, delegated (as he is hereby empowered to do) any of his functions in respect of the partition of an estate, and

^[1] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

^[2] i.e., the 8th December, 1897.
[3] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

- (b) any officer whom the Board[1] specially vests (as it is hereby empowered to do) with the powers of a Collector for the purposes of any partition under this Act:
- (iii) "Commissioner" means the Commissioner of Revenue to whom the Collector engaged in making a partition is subordinate;
- (iv) "Deputy Collector" includes any Assistant Collector, Deputy Collector or Sub-Deputy Collector whom the Collector may appoint (as he is hereby empowered to do) to effect a partition under this Act, or to conduct any of the proceedings connected with such partition;
- (v) "proprietor" includes every person who is in possession of any estate under partition or any portion of such an estate, or of any interest in any such estate or in any part of such an estate, as owner thereof, whether or not such person is a recorded proprietor of the estate;
- (vi) "recorded proprietor" means a person whose name is registered on the Collector's General Register of revenue-paying land as proprietor of an estate, or of any share or interest therein;
- (vii) the words "tenure," "permanent tenure," "holding" and "tenant" have the meanings attached to them in the Bengal Tenancy Act, 1885;[2] 8 of 1885.
 - (viii) "applicant" means any person who has applied to the Collector under the provisions of this Act for the separation from a parent estate of land representing the interest of such person in such estate, and for the assignment to him of such land as a separate estate liable for a demand of land-revenue distinct from that for which the parent estate is
 - (ix) "estate" means all lands which are borne on the revenue-roll of a Collector as liable for the payment of one and the same demand of land-revenue:
 - (x) "joint undivided estate" means an estate of which two or more persons are proprietors;
 - (xi) "parent estate" means an estate for the partition of which proceedings are in progress under this Act, or of which the partition has been effected under this Act;
 - (xii) "separate estate" means any distinct estate which is formed by the partition of a parent estate under this Act, or for the formation of which, by such partition, proceedings are in progress under this Act;
 - (xiii) "land" does not include houses or other buildings standing thereon:
 - (xiv) "rent" means whatever is lawfully payable or deliverable in money or kind by a tenant to his landlord on account of the use or

^[1] As to the present constitution and powers of the Board of Revenue see the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913), printed in Vol. III of this Code.
[2] Printed in Vol. I of this Code.

(Sec. 3.)

occupation of the land held by the tenant; and "rent payable in kind" means, in money, the amount which would be determined as the rent if a commutation were made under section 40, sub-section (4), of the Bengal Tenancy Act, 1885;[1]

8 of 1885.

- (xv) "assets," when used with reference to land, means-
 - (a) in the case of land held by cultivating raiyats—the rent payable by them;
 - (b) in the case of land which is occupied by a proprietor—the rent which might reasonably be expected to be payable by cultivating raiyats if the land were occupied by them;
 - (c) in the case of land held on a permanent tenure which was created by all the proprietors of the estate, and which by any law for the time being in force is protected against the purchaser at a sale for arrears of land-revenue—the rent payable by the holder of such tenure;
 - (d) in the case of land held on a tenure which, although not protected as aforesaid, is admitted by all the recorded proprietors of the estate to be a permanent tenure subject only to the payment of an amount of rent fixed in perpetuity, and

is of such nature that the rent thereof is not liable to be enhanced under any circumstances by the proprietors of the estates or any person deriving his title from such proprietors,—

the rent payable by the holder of such tenure, whether he be known as talukdar, patnidar or mukarraridar or by any other designation;

(e) in the case of unoccupied land and land forming portion of a village site—such amount, if any, as the Deputy Collector may determine with reference to all the circumstances of the case,

and includes-

- (f) all profits derived out of land by proprietors from trees, rights of pasturage, forest-rights, fisheries and all other legal sources;
- (xvi) "assets," when used with reference to an estate, means the assets of all land included in the estate;
 - (xvii) "Chapter" means a Chapter of this Act; and
 - (xviii) "section" means a section of this Act.

(Secs. 4-5.)

CHAPTER II.

RIGHT TO CLAIM PARTITION.

4. (1) Subject to the provisions of this Act, every recorded proprietor Who of a joint undivided estate who is in actual possession of the interest in entitled to respect of which he is so recorded shall be entitled to claim a partition claim partiof the said estate and the separation therefrom and assignment to him as a separate estate of land representing the interest of which he is in such possession.

- (2) Any two or more of such recorded proprietors may claim that land representing the interests of all such claimants be formed into one separate estate to be held by them as a joint undivided estate; and every provision of this Act which applies to an applicant for partition shall apply to any two or more persons making any such claim.
- 5. (1) If the interest of any recorded proprietor who is entitled to Partition claim partition is an undivided share in an estate held in common according to tenancy, he shall be entitled to have assigned to him as his separate estate land of which the assets shall bear the same proportion to the assets of the parent estate as his undivided share in the parent estate bears to the entire parent estate.

- (2) If the interest of such recorded proprietor is the proprietary right over specific mauzas or lands forming part of the parent estate and held by him in severalty, he shall be entitled to have assigned to him as his separate estate the said mauzas or lands.
- (3) If the interest of such recorded proprietor consists of an undivided share held in common tenancy in specific mauzas or tracts forming part of the parent estate, but not extending over the whole area of the parent estate, he shall be entitled to have assigned to him as his separate estate land, situated within such specific mauzas or tracts, of which the assets shall bear the same proportion to the assets of such specific mauzas or tracts as his undivided share in such specific mauzas or tracts bears to the entire mauzas or tracts:

Provided that, if the interest of such recorded proprietor consists of such an undivided share in more than one mauza or tract, he shall not be entitled to have land assigned to him in every such mauza or tract. but the Collector may assign to him as his separate estate land situated in any one or more of the said mauzas or tracts, subject to the condition that the assets of such land are in proportion to the aggregate of the interests which he holds in all such mauzas or tracts.

(4) If the interest of such recorded proprietor consists partly of land held in severalty, and partly of an undivided share either in the whole estate or in specific land held in common tenancy, he shall be entitled to have the portion of the common land falling by partition to his share added to the land held by him in severalty, and the estate thus formed (Secs. 6-10.)

shall be assigned to him as his separate estate, so that the assets shall bear the same proportion to the assets of the whole estate as his interest in all the land and undivided shares held by him bears to the aggregate interests of all the proprietors.

- (5) If the interest of such recorded proprietor is of more than one of the kinds specified in the preceding sub-sections, land shall be assigned to him as far as possible in accordance with the principles therein laid down.
- 6. Whenever any land is held in common between the proprietors of of land held two or more estates not being under partition, any one or more of such between the proprietors may, without applying for partition of their several estates inter se, apply for separation of the land held by them in common, and more estates, for the allotment of the proper shares of such land to each of their separate estates, the land-revenue of those estates remaining unaltered; and such application shall be dealt with as far as may be in accordance with the provisions of this Act.
- 7. (1) Where the lands of an estate have been divided by private arrangement formally made and agreed to by all the proprietors, and each proprietor has, in pursuance of such arrangement, taken possession of separate lands to be held in severalty as representing his interest in private arrangement. the estate, no partition of the estate shall be made under this Act except—
 - (a) on the joint application of all the proprietors, or
 - (b) in pursuance of a decree or order of a Civil Court.
 - (2) No objection to the partition of an estate under this Act on the ground that the lands have been divided by private arrangement shall be admitted unless it is presented before the Collector records a proceeding under section 29 declaring the estate to be under partition.

Tenants for life not entitled to claim partition.

Separation

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Partition of

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8. Notwithstanding anything hereinbefore contained, no person having a proprietary interest in an estate for the term of his life only shall be entitled to claim partition under this Act.

CHAPTER III.

SECURITY OF THE LAND-REVENUE.

Future partitions not to relieve land from liability for total landrevenue, unless made as provided in this Act.

- 9. No partition of an estate made after the commencement of this Act shall relieve any land from liability to the Government for the total demand of land-revenue assessed upon the estate of which the land forms part, unless the partition is made as herein provided.
- Amount of land-revenue to be assessed on each separate estate.
- 10. Except as otherwise provided in this Act, the amount of landrevenue assessed on each separate estate shall bear the same proportion to the whole amount of land-revenue for which the parent estate was

(Secs. 11-13.)

liable as the assets of such separate estate bear to the whole assets of the parent estate.

11. Subject to clauses (b) and (c) of section 2 of this Act, no Restrictions partition of an estate shall be made, and no application for the partition of estate of an estate shall be admitted,—

with refer-

- (a) if the annual amount of land-revenue for which the separate ence to land-revenue. estate of the applicant would, after partition, be liable would not exceed ten rupees; or
- (b) if, after separation of the applicant's interest, the annual amount of land-revenue for which the separate estate of the remaining proprietor or proprietors would be liable would not exceed five rupees; or
- (c) if the Collector considers that for any reason any of the separate estates would be likely to prove an insufficient security for the payment of the land-revenue which would be separately charged upon it.
- 12. (1) Any Civil Court which has made a decree for the partition Execution of or for the separate possession of a share of an undivided estate paying decree for partition. land-revenue to the Government may, notwithstanding anything in 14 of 1882. section 265 of the Code of Civil Procedure,[1] cause the decree to be executed in the manner prescribed in section 396 of that Code; [2] and, if it does so, the joint and several liability of the entire estate for the whole of the land-revenue chargeable upon it shall not be prejudiced or affected.

- - (2) If any decree is sent to the Collector for execution under section 265 of the said Code.[1] the execution thereof shall be subject to the restrictions imposed by section 11 of this Act.
 - 13. The Collector may refuse to admit an application for the Power to formation of land held in severalty into a separate estate, or to proceed refuse partiwith a partition undertaken on such an application, or to admit or proceed would result with any other application for partition, if, in consequence of the land in formation of estates being intermingled with that held by other proprietors, the result of scattered the partition would be to form out of a compact estate one or more so as to estates consisting of scattered parcels of land in such a way as, in the the safety opinion of the Collector, to endanger the safety of the land-revenue:

of the landrevenue.

Provided as follows:--

(a) a partition may be allowed in any such case if the recorded proprietors agree to such a distribution of land as would make the estates formed by the partition reasonably compact;

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be construed as a reference to section 54 of that Code-see s. 158 thereof.

^[2] This reference should now be construed as a reference to rules 13 and 14 in Order XXVI in Schedule I to the Code of Civil Procedure, 1908—see s. 158 thereof.

(Secs. 14-16.)

(b) nothing in this section shall be deemed to prohibit the partition into separate estates of any parent estate which before such partition is not compact and consists only of scattered parcels of land.

Interest alienated to liability for landrevenue.

14. No proprietor who has alienated any portion of his interest in with special an estate, or in any specific land of an estate, by private contract, with condition as the condition that the transferee shall be liable in respect of the interest acquired by him to pay a specified amount or a specified share of the land-revenue for which the estate is liable (such amount or share being other than the proportionate amount or the proportionate share for which such transferred interest if formed into a separate estate would be liable under section 10),

and no proprietor who has derived his title from any proprietor who has made any alienation as aforesaid,

shall be entitled to claim a separation under this Act of the interest which he continues to hold in the estate;

and no such transferee as aforesaid, and no person deriving his title from such a transferee, shall be entitled to claim a separation of the interest which has been so acquired:

Provided that a separation of such interests may be made if the parties concerned agree—

- (a) to waive the conditions of the contract as regards the proportion of land-revenue for which the transferor and transferee or their representatives respectively are liable, and
- (b) to hold the estates which may be allotted to them respectively by the partition subject to the payment of such amount of land-revenue as may be assessed upon them respectively under this Act.
- 15. If any estate has been declared to be under partition as provided in section 29, any arrears of land-revenue accruing due thereon before the date specified in the notice issued under section 94 may be realized by sale of the estate as if the same had not been declared to be under partition; and, if such sale takes place, the partition proceedings shall cease from the date thereof, but shall be revived if the sale is set aside.
- 16. Nothing contained in section 15 shall be deemed to affect the provisions of section 10, section 11, section 12, section 13 or section 14 of Act 11 of 1859[1] (an Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency), or any similar law for the time being in force, in respect to the opening of separate accounts for different shares in an estate and the protection afforded to such shares thereby:

Provided that, if any share in any estate is sold for its own arrears of land-revenue while such estate is under partition in accordance with the provisions of this Act, such share shall be sold subject to the

Sale, for arrears of landrevenue, of an estate which is under partition.

Sale for arrears of landrevenue. of share in an estate which is under partition.

(Secs. 17-19.)

partition proceedings, which shall proceed as if no such sale had taken place; and the purchaser of the share sold may, from the date of such sale, exercise all the rights which the proprietor whose share he has purchased might have exercised, and shall be subject to all the liabilities to which such proprietor would have been subject in respect of the partition proceedings.

CHAPTER IV.

INITIATION AND DISCONTINUANCE OF PARTITION PROCEEDINGS.

- 17. Every application for partition shall be made in writing to the Application Collector of the district on the revenue-roll of which the estate is borne, how to be and shall be presented by the applicant or by his duly authorized agent. made.
- 18. Every such application shall be signed by the applicant, or by Application his duly authorized agent, and shall contain the following particulars, and to conso far as they are known to or can be ascertained by him, namely: - tain certain
 - (a) the name of the parent estate;
 - (b) the number under which such estate is borne on the revenueroll, and the land-revenue demand for which it is liable;
 - (c) the number under which such estate is borne on the Collector's General Register of revenue-paying lands;
 - (d) the name and address of every proprietor, whether recorded or unrecorded, of such estate, the name and address of every proprietor of any other estate holding land in common with the proprietors of the parent estate, and the name of the post office of the area within which each of the said proprietors resides;
 - (e) the character and extent of the interest of which each proprietor of the parent estate is in possession;
 - (f) a specification of any land held by proprietors of the parent estate in common with proprietors of other estates and of the rights of such proprietors respectively in such land, and
 - (g) such further particulars, if any, as may be prescribed by rules made by the Board.[1]
- 19. (1) Every such application shall, subject to the provisions of Application sub-section (4) of this section, be accompanied by a copy of the rent-roll to be accompanied by of the estate, and by a specification referring to the papers of every copy of rent measurement and record-of-rights which has respectively been made of specification and prepared for the estate by any officer appointed in that behalf by of previous the Government or other competent authority and of which the person ments and verifying the application under sub-section (2) has knowledge.

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

(Secs. 20-21.)

- (2) The said application, rent-roll and specification shall be verified at the foot of the application, by the applicant, or by his duly authorized agent having personal knowledge of the facts stated therein, in the manner following, or to the like effect:—
- "I, A. B., declare that the particulars contained in this application and in the rent-roll and specification accompanying it are correct to the best of my knowledge and belief."
- (3) If the said application, rent-roll or specification contains any entry which the person making the verification knows or believes to be false, or does not believe to be true, such person shall be liable to be punished in the same manner as if he gave false evidence.
- (4) If the person presenting the application is unable to produce a rent-roll as required by sub-section (1) of this section, he shall state the reason of such inability, and the name and address of the person who has in his possession the information necessary for the preparation of such rent-roll; and the Collector may, if he thinks fit, require such person to produce such rent-roll.

Procedure if application is not in order.

20. If any such application does not in the opinion of the Collector fulfil the requirements of the foregoing sections of this Chapter, he may either reject it or return it for amendment.

Notification and notice of application.

- 21. If in the opinion of the Collector the application fulfils the said requirements, and if there appears to him to be no objection to making the partition, he shall—
 - (a) publish a notification of the application in the manner prescribed by section 104, and also by causing copies to be posted up at the Court of the Judge of the district and at the Court of every Munsif and Subdivisional Officer within whose jurisdiction, and at every police-station within the jurisdiction of which, any land appertaining to the estate is known to be situated;
 - (b) by such notification invite any person claiming any proprietary right in the estate, who may object to the partition, to state his objection, either in person or by duly authorized agent, on or before a day to be specified in the notification, not being less than thirty or more than sixty days from the date of the publication of the notification on the estate; and
 - (c) serve a notice of the application on such of the recorded proprietors of the estate as have not joined in the application, on any unrecorded proprietor who has been named in the application, and on every proprietor of any other estate who holds land in common with the proprietors of the estate to which the application relates.

(Secs. 22-26.)

22. If any person claiming a proprietary right as aforesaid states Power to an objection to the partition on or before the day specified in the noti- application fication published under section 21, or at any subsequent time if it shall on receipt then seem fit to the Collector to admit such objection, and the Collector, of objection. on consideration of the objection, is of opinion that there is good and sufficient reason for rejecting the application, he may reject the same, and if he does so shall record the grounds of such rejection.

23. If any such objection raises any question of right or title or of Procedure extent of interest as between any applicant and any other person claim- when objecing to be a proprietor of the parent estate, and if it appears to the Colary question lector that such question has not been already determined by a Court of right or of title or of of competent jurisdiction, the Collector may hold such inquiry into the extent of objection as he may deem necessary, and, if he be satisfied that the appli- interest. cant is in possession of the extent of the interest for the separation of which he has applied, may, instead of rejecting the application as provided in section 22,

- (a) direct that the partition proceedings shall proceed for the purpose of forming and assigning to the applicant a separate estate in accordance with the extent of interest claimed by him in the parent estate; or
- (b) direct that such proceedings be postponed for four months.
- 24. At the expiration of the said four months the Collector shall Resumption resume the proceedings, unless the person who has made the objection, of proceedings after or some other person,-

postpone-

- (a) has obtained an order from a Civil Court directing that such ment. proceedings be stayed, or
- (b) shows that a suit has been instituted before a Civil Court to try some question of such a nature as to lead the Collector to think the proceedings ought to be stayed until the question has been finally decided or until the proceedings in such Court in respect thereof shall have terminated.
- 25. No suit instituted in a Civil Court, after the lapse of four months Suits instiafter the Collector has—

(a) made a direction under clause (a) or clause (b) of section 23; or not to affect

(b) recorded a proceeding under section 29, by any person claiming any right or title in or to a parent estate, shall for partition. avail to affect or stay the progress of any proceedings which may have been taken under this Act for the partition of the estate.

26. (1) Every decree affecting a parent estate made by a Civil Court Decree made after the estate has been declared under section 29 to be under partition, while partibut before the date specified in the notice served under section 94,-

(a) shall be made in recognition of the proceedings in progress progress. under this Act for the partition of the estate, and

tuted after four months

ings are in

(Sec. 27.)

- (b) shall be framed in such manner that the decree may be applied to, and carried out in reference to, the separate estates which the Collector in his proceeding recorded under section 29 has ordered to be formed out of the parent estate.
- (2) If the effect of any such decree be to declare any person or body of persons to be entitled to any extent of interest in the parent estate in excess of the extent of interest which the Collector in the said proceeding has declared to be held by such person or body of persons, the decree shall specify, separately in respect of every proprietor or body of proprietors of whose interests the Collector has separately specified the extent in the said proceeding, the proportion of such excess which such person or body of persons is entitled to recover from every such proprietor or body of proprietors;

and every person or body of persons so entitled to recover any extent of interest from any such proprietor or body of proprietors shall, for the purposes of the partition proceedings, be deemed to have the same rights, and to be subject to the same liabilities, as a person who has acquired such extent of interest from a proprietor or body of proprietors by private purchase after an estate has been brought under partition under section 29 and on the date on which the decree was passed;

and such person or body of persons may apply, as in this Act provided, for the separation and assignment to him or them of the lands representing the extent of interest so acquired;

and, notwithstanding anything contained in section 11, such application shall be dealt with as provided in section 30;

and the lands thereupon assigned to the said person or body of persons shall be amalgamated with his or their separate estate.

Decree made after partition proceedings completed.

- 27.(1) Every decree affecting a parent estate made by a Civil Court after the date specified in the notice served under section 94, in a suit which was instituted as mentioned in section 25,—
 - (a) shall be made in recognition of the partition proceedings, and
 - (b) shall be framed so as to give effect to the division of the parent estate into separate estates which has been ordered by the Collector, and so as not to disturb such division.
- (2) If the effect of any such decree be to declare any person or body of persons to have been entitled to any extent of interest in the parent estate in excess of the extent of interest which is represented by the separate estate assigned to such person or body of persons by the Collector in the partition proceedings, the decree shall specify, separately in respect of the proprietor or joint proprietors of every separate estate formed by the partition, the proportion of such excess of interest which such person or body of persons is entitled to recover from such proprietor or joint proprietors;

(Secs. 28-29.)

and every person or body of persons so entitled to recover any extent of interest from the proprietor or joint proprietors of a separate estate shall be entitled to recover such extent of interest out of the separate estate which has been assigned to such proprietor or joint proprietors, and out of such separate estate only;

and the decree shall be executed by placing the person or persons so entitled in the position of a recorded joint proprietor or recorded joint proprietors of such separate estate, holding the same as a joint undivided estate in common tenancy with the proprietor or joint proprietors to whom such separate estate was assigned by the Collector in the partition proceedings, the extent of the interest of the joint proprietors respectively in such estate being such as is declared in the decree.

- 28. (1) A Civil Court may at any time direct the Collector, upon an Power of application being made to him in accordance with sections 17, 18 and Civil Court to order 19,—
 - (a) to assign to any person land representing a specified interest application being made in any estate, or in any specified village or tract of land in to Collector. an estate, to be held by such person as a separate estate; or
 - (b) to divide off from any estate any specified land or villages, and to assign it or them to any person to be held as a separate estate:

Provided that no Civil Court shall in any such case—

- (i) specify the amount of land-revenue for which any separate estate which it may direct to be formed under the provisions of this section shall be liable, or
- (ii) direct the Collector to carry out a partition otherwise than in accordance with the provisions of this Act.
- (2) The Collector shall assess the land-revenue on every such separate estate in accordance with the provisions of this Act.
- 29. If no objection be made, within the time specified in the noti- Admission fication published under section 21, to an application for partition, or of application for partition, or of application for when all objections have been disposed of, and if the Collector has no partition, reason to believe that any obstacle exists to his making the partition as and procedure there applied for.

he shall direct that the application be admitted, and shall record a proceeding-

- (a) declaring the estate to be under partition for the purpose of forming and assigning to the applicant a separate estate:
- (b) declaring the extent of interest in the parent estate which he finds to be held by the applicant or joint applicants; or, if more than one separate application for separation has been admitted, the extent of interest in the parent estate which he finds to be held by every separate applicant or body of joint applicants, respectively:

partition on

upon.

(Secs. 30-31.)

- (c) declaring the extent of interest which remains to any recorded proprietor or body of recorded proprietors who are not applicants;
- (d) ordering that land proportionate to the interest so declared to be held by each applicant, or body of joint applicants respectively, shall be formed into a separate estate, to be assigned to such applicant or body of joint applicants; and
- (e) ordering that land proportionate to the interest so declared to remain to any recorded proprietor or body of recorded proprietors who are not applicants shall be left forming a separate estate;

and shall at the same time issue a notice to each of the proprietors by registered post letter informing him that the application for partition has been admitted and that the partition will be proceeded with, and requiring him to register his name and address and to appoint an agent to accept service of process and to make any appearance or application or do any act required or authorized to be made or done by a party to a partition under this Act.

Subsequent application for separation of another share.

- **30.** (1) At any time after the Collector has recorded a proceeding under section 29, and before the Deputy Collector has partitioned the land into separate estates under section 57, any recorded proprietor in the estate, other than the original applicant, may apply for the separation of his share.
- (2) The Collector may reject or admit any such application; and if he admits it may order either that proceedings for effecting such separation shall be carried on simultaneously with the previous proceedings or that compliance with the application be postponed until such previous proceedings have been completed and the shares separated in accordance therewith.
- (3) When the consideration of any application which has been postponed under sub-section (2) is resumed, the papers of the previous proceedings aforesaid may be used so far as they are applicable.
- 31. The Collector may refer any application for partition to any Deputy Collector for the purpose of making inquiries and doing any other thing authorized or required by this Chapter:

Power of Collector to refer application for partition to Deputy Collector.

Provided that every order—

- (a) rejecting an application under section 22,
- (b) directing, under section 23, that partition proceedings shall proceed or shall be postponed,
- (c) directing, under section 29, that an application for partition be admitted,
- (d) made under section 30, or
- (e) appointing a Deputy Collector under section 32, and every proceeding recorded under section 29,

(Secs. 32-37.)

shall be made and recorded, respectively, by the Collector and not by any Deputy Collector.

32. As soon as the Collector has declared an estate to be under parti- Power of tion as provided in section 29, he may appoint a Deputy Collector to appoint carry out the partition and all or any of the proceedings necessary Deputy thereto.

Collector to carry out partition.

33. (1) If, at any time after an order has been passed for making a Power to partition of a parent estate, all the recorded proprietors of the estate strike partipresent a petition to the effect that they do not wish the partition to the file, on proceed, the Collector may, after such inquiry as he considers necessary, petition of strike the partition case off the file, and at the same time require the proprietors to pay all costs incurred in and about the partition.

(2) Any such costs which have not already been levied as provided in Recovery of section 37 shall be levied in proportion to the shares of the respective costs. proprietors.

34. (1) If, at any time after an order has been passed for making a power of partition, it appears to the Commissioner that any sufficient reason exists Commiswhy the partition should not be proceeded with,

he may, on the report of the Collector or otherwise, after issuing a partition notice calling on the persons interested to show cause why the partition file. case should not be struck off the file, and after considering any objections which may be made, order the partition case to be struck off the file.

(2) All costs which have not already been levied as provided in sec-Recovery of tion 37 shall thereupon be levied in proportion to the shares of the res-costs. pective proprietors.

CHAPTER V.

ESTABLISHMENTS AND COSTS.

35. The Deputy Collector, with the approval of the Collector, and Power to subject to any rules made in that behalf by the Board,[1] may appoint appoint establishsuch persons as may be needed for the purposes of any proceedings under ments and this Act and prescribe the scale of their remuneration.

prescribe scale of remuneration.

36. In any district or division in which partitions are so numerous Power to or extensive as to render necessary the appointment of a special estab-appoint lishment in the office of the Collector or of the Commissioner, the Collector or the Commissioner, as the case may be, with the previous sanc-ment. tion of the Board, [1] may appoint such establishment.

37. (1) As soon as possible after an estate has been declared to be Estimating under partition as provided in section 29, the Collector shall estimate and levy of the cost of making the partition; and the amount shall be levied from partition. the proprietors in such instalments and at such times as may be fixed by rules made by the Board.[1]

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

(Secs. 38-41.)

(2) If the amount first estimated is found insufficient, supplementary estimates may be made from time to time, and the required amount may be levied as provided in sub-section (1).

Apportionment of cost of partition.

38. The cost of making a partition shall be apportioned on the proprietors of the several shares in proportion to their shares:

Provided that whenever it appears to the Collector that any partition proceedings have been unnecessarily delayed and the cost of the partition enhanced, by obstacles vexatiously put in the way of the completion of the proceedings by one or more of the proprietors, or by want of due diligence on the part of one or more of the proprietors in carrying out any requisition made upon him or them,

the Collector may direct that such portion of the cost as he may think proper, in excess of the amount proportionate to the share or shares of such proprietor or proprietors, shall be paid by him or them.

39. Whenever any local inquiry is held by the Deputy Collector or any other officer, in consequence of an objection raised by any person to any record of measurements, rent-roll or other information which has been laid before the Deputy Collector,

the Deputy Collector may declare the cost which has been incurred by such inquiry, and may direct that the entire cost so declared-

- (a) shall be paid by the person making the objection, or by any one of the proprietors; or
- (b) shall be paid, in such proportions as the Deputy Collector thinks fit, by the said person and the proprietors or any of them; or
- (c) shall be deemed to be a part of the cost of the partition.
- 40. (1) Upon the completion of a partition, the Collector shall make an order declaring the total cost thereof.
- (2) The account shall then be adjusted, either by returning to the proprietors any sums which they may have paid in excess of the total cost, or, if necessary, by levying from them, in the manner provided in section 108, any sums remaining due.
- 41. (1) Whenever it appears to the [Board][1] that the work required to be done in connection with partitions under this Act in any district is so great that it would, if concentrated in the hands of one or more Deputy Collectors, fully occupy the time of such one or more Deputy Collectors, [it][2] may make an order directing that the

[1] The word "Board" was substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch., Part II, printed in Vol. III of this Code.
[2] The word "it '2 was substituted for the word "he" by ibid.

Power of Deputy Collector to declare cost of local inquiry and by whom it is to be paid.

On completion of partition, total cost to be declared and account adjusted. Power to direct that salary of Deputy Collector, and cost

of special establishment, be

(Secs. 42-43.)

salary of such one or more Deputy Collectors, as the case may be, shall be recovered as recovered from the proprietors of estates under partition in such district, of partitions. as part of the costs of such partitions.

(2) For the purposes of sub-section (1) the salary of a Deputy Collector shall be deemed to be the amount of salary which is drawn by a Deputy Collector of the lowest grade.

(3) Whenever it appears to the [Board][1] that the said work in any district is so great as to occupy a considerable portion, though not the whole, of the time of a Deputy Collector,

or whenever a special establishment is appointed under section 36, the [Board][1] may direct that a portion of the salary of such Deputy Collector or the whole of the cost of such special establishment shall be recovered from the proprietors of estates under partition in such district, as part of the costs of such partitions.

42. (1) The Lieutenant-Governor may direct that in any district a Estates Fund, to be called the "Estates Partition Fund," shall be formed, into Fund. which all sums levied from the proprietors of estates in such district in respect of partitions of their estates shall be paid and from which all costs of making partitions of estates in such district shall, except as provided in section 43, be defrayed.

- (2) When the formation of an Estates Partition Fund has been directed in any district, the charges leviable in that district from the proprietors of any estate under partition may, notwithstanding anything contained in the foregoing sections of this Chapter, be levied according to a general scale of fees to be fixed by the Board. [2]
- (3) Such scale of fees shall be fixed, as nearly as may be, so that the receipts and expenditure of the said Fund shall balance one another, and shall be revised from time to time by the Board[2] so as to secure compliance with this condition.
- (4) The said fees shall be apportioned, and the proportionate amount thereof due from any proprietor or proprietors may be increased, in the manner and under the circumstances mentioned in section 38.
- (5) The said fees shall be levied from the proprietors in such instalments and at such times as may be fixed in accordance with any rules which the Board[2] may make in this behalf.
- (6) An abstract of the Estates Partition Fund of each district, made up to the end of each financial year, shall be published in the Calcutta Gazette and posted up at the office of the Collector of the district.
- 43. (1) Whenever any Civil Court makes a decree awarding or de- Order by claring any proprietary right in an estate, and requires the Collector Civil Court

^[1] See footnote [1] on p. 672, ante.
[2] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

(Secs. 44-46.)

for payment to make a partition of the estate, the Court shall, subject to the proviby parties of sions of sections 38 and 39, at the same time direct eithercosts of partition.

(a) that the party or parties who has or have withheld the right so decreed shall defray the whole of the costs of the partition or the whole of the fees payable in respect of the partition under section 42, or

(b) that the said costs or fees shall be defrayed by all or any of the parties to the suit in which the decree was made, in such proportions as the Court may, upon a consideration of the particular circumstances of the case, deem equitable.

(2) Copies of all orders passed under sub-section (1) shall be transmitted to the Collector for his guidance, together with the precept which the Court issues to him requiring him to divide the estate; and the Collector shall levy the said costs or fees from the parties, in accordance with the order, in the same manner and by the same means as if the levy of such costs or fees had been ordered by himself.

CHAPTER VI.

Proceedings up to the Determination of the Partition.

Powers of Deputy Collector in making a partition.

44. Every Deputy Collector making a partition shall, as regards the estate under partition, have so far as they are applicable all the powers exercisable by a Survey-officer under the Bengal Survey Act, 1875,[1] Ben. Act 5 and by a Revenue-officer employed in preparing a record-of-rights under

Chapter X of the Bengal Tenancy Act, 1885[2].

8 of 1885.

Deputy Colpare record of existing rents and assets.

45. As soon as the Collector has recorded a proceeding under section lector when 29, declaring an estate to be under partition, the Deputy Collector shall, vey and pre-subject to the provisions of section 49, make a survey and prepare a record of existing rents and other assets of all lands included in the estate.

Particulars to be recorded.

46. In making a survey and preparing a record of existing rents and other assets of land under section 45, the Deputy Collector shall ascertain and record the following particulars, namely :-

(a) the name of each proprietor, landlord and tenant of the estate, and of every owner of revenue-free land and occupier of rent-free land therein:

(b) the situation, area and boundaries of the land owned or occupied by each of the said persons, and the character and extent of the interest held by each and the area of all other land in the estate which is not held by tenants;

^[1] Printed ante, p. 169.

^[2] Printed in Vol. I of this Code.

(Secs. 47-48.)

- (c) the rent then payable for all rent-paying lands,—
 - (i) as stated by the landlord,
 - (ii) as stated by the tenant, and
 - (iii) as taken by the Deputy Collector for the purposes of the partition; and
- (d) the assets, if any, of all other lands; and shall be guided by such rules as the Board may make under section 121, clause (1).
- 47. (1) When the Deputy Collector has made a survey and prepared Attestation a record of existing rents and other assets of land under section 45, he of survey papers and shall publish a notification, in a form to be prescribed by the Board,[1] record of fixing a day on which he will be present in the village, or at a convenient existing rents and place within limits of distance to be fixed by general or special order of assets. the Board, [1] for the purpose of attesting the survey papers and record of existing rents and other assets.
- (2) On the date fixed by the notification, or on any other date to which the proceedings may be adjourned, the entries made in the record of existing rents and other assets under section 46, or such of them as the Board[1] may by rule prescribe, shall be read out, and corrected or added to as may appear necessary, in the presence of such of the interested persons as are in attendance.
- (3) If the correctness of any entry is disputed, the Deputy Collector shall note the statements of such of the persons aforesaid as are interested in the disputed entry and shall, after making such local inquiry, if any, as he thinks fit, pass a summary order declaring what entry shall be accepted for the purposes of the partition.
- (4) If the correctness of any measurement is called in question and a fresh measurement is demanded, the Deputy Collector may require the costs of the re-measurement to be deposited.
- (5) If the re-measurement shows the original measurement to have been inaccurate, the amount deposited shall be refunded to the objector.
- 48. When the survey papers and the record of existing rents and Publication other assets have been attested as provided in section 47, the Deputy Col- of survey lector shall cause a copy thereof to be locally published in such manner record of and for such period as the Board[1] may by rule prescribe, and there existing shall be furnished to each landlord and tenant a copy of such of the assets. entries relating to his estate, tenure or holding, as the case may be, as the Board [1] may by rule prescribe.

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

(Secs. 49-51.)

Power of Deputy Collector to accept previous survey, record-ofrights, measurements or rent-rolls. instead of making a new survey and a record of existing rents and

assets.
Record of order, fixing of day for determining partition and service of notices.

49. If at any time a survey of the estate under partition or any part thereof has been made or a record-of-rights prepared by an officer appointed in that behalf under the orders of the Government, or

if any measurement papers and rent-rolls are filed under section 19, or at any time before a survey has been begun under section 45, and if the correctness of such measurement papers and rent-rolls is admitted in writing by all the proprietors, and is verified by the Deputy Collector after testing on the spot, and if the Deputy Collector is satisfied that the land-revenue would not be endangered,

the Deputy Collector may, unless the Collector otherwise directs, and after making any correction which may appear necessary, accept the papers of such survey, or the said record-of-rights, measurement papers or rent-rolls, instead of making a new survey and preparing a record of existing rents and other assets under section 45.

- 50. When the documents referred to in section 48 have been published or any documents referred to in section 49 have been accepted, the Deputy Collector shall record an order stating that such documents have been adopted for the purposes of the partition and shall—
- (a) fix a day on which to determine the partition of the lands into the several separate estates,
- (b) publish a notification calling on all the proprietors to be present on the day so fixed, such day being not less than thirty or more than sixty days after the publication of the notification in his office, and at the same time serve a notice on each of the proprietors to the same effect, and
- (c) serve a similar notice on the proprietors of each of the adjoining estates, inviting them to appear and file their objections, if any, if they dispute the possession of any land of the estate under partition.

CHAPTER VII.

PARTITION BY AMICABLE ARRANGEMENT OR BY ARBITRATION.

- Power to allow partition to be made by proprietors themselves or by arbitrators.
- 51. (1) If all the recorded proprietors present, on or before the day fixed under section 50, a petition requesting to be allowed to make the partition on the basis of the papers adopted by the Deputy Collector under Chapter VI,—
 - (a) privately among themselves, or
 - (b) by arbitration,
- the Deputy Collector may grant the request.
- (2) If, after such request has been granted, the proprietors or the arbitrators fail to make the partition within such time as may be fixed by the Deputy Collector in that behalf, the Deputy Collector shall make the partition himself.

(Secs. 52-57.)

52. When a partition has been referred to arbitration, the proceed-Procedure on ings shall, except as hereinafter otherwise expressly provided, be conducted in accordance with the provisions of sections 506 to 522[1] (both inclusive) of the Code of Civil Procedure, so far as they are applicable.

53. (1) The arbitrator or arbitrators shall, within a period to be fixed Arbitrators by the Deputy Collector, which period may be further extended by him, to deliver a deliver to the Deputy Collector a full and complete paper of partition, paper. in such form as the Board[2] may, by rule, prescribe.

- (2) If default is made in complying with sub-section (1), the Deputy Collector may withdraw the case from arbitration and may make the partition himself.
- 54. (1) The arbitrator or arbitrators, on delivering the paper of Remunerapartition as aforesaid, shall be entitled to reasonable fees for his or their tion of arbitrators. services.

- (2) The amount of such fees shall be fixed, with the approval of the Commissioner, by the Deputy Collector who made the reference to arbitration, and shall be deemed to form part of the costs of making the partition.
- 55. Every partition made under this Chapter by proprietors or by Approval of an arbitrator or arbitrators shall be subject to the approval of the Collector Collector and the confirmation of the Commissioner:

and other authorities.

Provided that no such partition shall be disallowed except—

(a) on the ground of fraud, or

(b) on the ground that the partition cannot be confirmed without endangering the safety of the land-revenue.

56. When a partition has been made under this Chapter, the land-Assessment revenue on each separate estate into which the parent estate is divided of land by such partition shall be assessed by the Collector in the manner pre-revenue. scribed by section 10.

CHAPTER VIII.

MAKING OF PARTITIONS BY THE DEPUTY COLLECTOR, AND APPROVAL THEREOF BY THE COLLECTOR.

57. (1) If no petition is presented under section 51, the Deputy Procedure Collector shall, on the day fixed under section 50, or on any subsequent where no day or days to which the hearing may be postponed by notice posted at presented his office,—

under section 51.

(i) consult all proprietors who are present, and

in Schedule II to that Code—see s. 158 thereof.
[2] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rules 1 to 16

Submission

of case to

Collector;

his duties.

(Sec. 58.)

- (ii) hear, and, after such inquiry as he may consider necessary, dispose of, any objections which they may urge.
- (2) The Deputy Collector shall then proceed to determine how the lands of the parent estate shall be partitioned into the separate estates, and all matters arising out of such partition; and shall cause to be prepared—
 - (a) a paper of partition, in a form prescribed by rules made by the Board, [1] specifying in detail—
 - (i) the lands which he has included in each separate estate, and the area of such lands.
 - (ii) the rental of such lands, and the other assets, if any, of each separate estate,
 - (iii) the name or names of the recorded proprietor or proprietors of each separate estate,
 - (iv) any stipulations which may have been made regarding places of worship, tanks or other matters mentioned in Chapter IX, and
 - (v) the amount of land-revenue to be assessed on each separate estate in the manner prescribed by section 10; and
 - (b) a map showing the lands which fall within each separate estate and the boundaries of such lands.
- (3) In making the partition the Deputy Collector shall be guided by the provisions of Chapter IX, and shall make the partition in the manner which, in his opinion, is on the whole most in accordance with those provisions and most equitable and convenient to all parties concerned.
- 58. (1) The partition, as made under this Chapter, shall be submitted for the sanction of the Collector, and he shall by notice fix a day for the consideration of the same.
- (2) Every such notice shall be served on the proprietors and shall be published in the manner prescribed by section 104.
- (3) The day fixed by the said notice shall be not less than fifteen days after the publication of the notice at the Collector's office.
- (4) After hearing and disposing of any objection which may be preferred, the Collector shall pass such orders as he may think proper—
 - (a) approving the partition, with or without amendments; or
 - (b) making a new partition; or
 - (c) returning the papers to the Deputy Collector for amendment of the partition, or for making a new partition, with such directions as to the Collector may seem fit in regard to the issue of a notice to appear to the proprietors or any of them who are specially interested.

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

Deputy

Collector

tition has been ap-

Collector,

or when Collector

(Secs. 59-61.)

- (5) If the papers are returned to the Deputy Collector, the Collector shall, on their re-submission, proceed again to consider the partition as provided in the foregoing sub-sections of this section.
- **59.** (1) When the partition has been approved by the Collector, the Duties of Deputy Collector shall, after making such alterations as may be necessary in the partition paper or map, or preparing a new partition paper or when parmap, in accordance with the orders passed by the Collector,
- (a) cause to be prepared a separate extract of the portion of the proved by partition paper which relates to each separate estate;
- (b) cause to be tendered to any recorded proprietor of a separate estate, or any authorized agent of such proprietor, who may be in new attendance at the Deputy Collector's office, the extract which relates to partition. such separate estate, and
- (c) publish a notification at his office calling upon every proprietor to whom or to whose agent an extract from the partition paper has not been tendered as aforesaid, to take out of the Deputy Collector's office the extract of the portion of the partition paper relating to his separate estate.
- (2) If the circumstances of the partition so require, an extract of the map prepared by the Deputy Collector, or a copy of such map, shall be annexed to every separate extract from the partition paper mentioned in sub-section (1).
- (3) The Deputy Collector shall also proceed in the manner hereinbefore provided when the Collector makes a new partition.
- 60. No proprietor who has failed to appear before the Deputy Proprietor Collector in person or by agent on a day fixed, under section 50 or sec-not appeartion 57, for the partition of the lands into the several separate estates, and no proprietor who has failed so to appear before the Collector on a day fixed under section 58, shall, unless he shows sufficient cause for make such failure, be entitled at any subsequent time to make any objection to the orders which may be passed on such days respectively.

ing on fixed day not entitled to objection.

61. When a partition has been approved by the Collector, or when Submission he has made a new partition, and after the tender of extracts and the of the publication of a notification as provided in section 59, the Collector—

shall cause a notice to be served on each of the recorded proprietors, after stating that the papers will be submitted at once for confirmation of the approval of partition by the Commissioner, and that any appeals or objections must be presented to the Commissioner, or to the Collector for transmission Collector.

papers to the Commissioner the partition by the (Secs. 62-65.)

to the Commissioner, within thirty days from the date of the service of the said notice;

and shall, after the issue of such notice, forward to the Commissioner all papers relating to the partition.

CHAPTER IX.

GENERAL PRINCIPLES FOR MAKING PARTITIONS.

Lands held in common tenancy.

Separate estates to be made compact.

62. Each separate estate shall be made as compact as is compatible with the primary object of making an equitable partition among the proprietors and with the provisions of this Chapter.

Circumstances to be considered in making partition.

- 63. In selecting the villages or land to be assigned to each separate estate formed out of a parent estate which has been held in common tenancy, the Collector shall take into consideration the advantages or disadvantages arising from-
 - (a) situation;
 - (b) the vicinity of roads, railways or navigable rivers or canals;
 - (c) the nature and quality of the soil and produce;
 - (d) the quantity of cultivable and uncultivable waste land;
 - (e) the facilities for irrigation;
 - (f) the state of embankments and water-courses; and
 - (g) liability to accretion and diluvion;

and any other circumstances affecting the value of the land.

Rights when dwellinghouse one proprietor is situated on land to be allotted to another proprietor.

- 64. (1) If a dwelling-house belonging to one proprietor is situated on any land which it may be necessary to include in the separate estate belonging to of another proprietor, the owner of the house may retain occupation thereof, with the buildings and grounds immediately attached thereto, upon agreeing to pay rent annually in perpetuity for the land occupied by the house, buildings and grounds to the proprietor of the separate estate in which such land is included.
 - (2) The limits of the land so occupied and the rent to be paid for it shall be fixed by the Deputy Collector, and shall be stated in the paper of partition.
 - (3) In every such case a defined pathway shall, as far as possible, be secured to the owner of the house, leading from the house to some portion of the separate estate allotted to him.

Power to apply section 64 to gardens, ētc.

65. Whenever the Deputy Collector thinks fit, he may apply the provisions of section 64 to gardens, orchards, land planted with bamboos. and any other land which in his opinion is of special value to the proprietor in whose occupation it is found to be, in consequence of improvements made by such proprietor or of the particular use to which such land is put.

(Secs. 66-71.)

66. The rent fixed in perpetuity on any land by the Deputy Collector Rent for under section 64 or section 65 shall be deemed, for the purposes of the land fixed partition, to be the assets of such land.

under section 64 or 65 deemedto be the assets of the land.

67. When the dwelling-house of one proprietor, with the buildings Redempand grounds immediately attached thereto, has been included in the tion of separate estate of another proprietor, and the rent to be paid in perpe- under sectuity for the land occupied thereby has been fixed by the Deputy tion 64. Collector and stated in the paper of partition,

the first-mentioned proprietor may apply to the Deputy Collector for permission to redeem the rent so fixed, and the Deputy Collector shall give such permission unless he is of opinion that the redemption would endanger the safety of the land-revenue for the payment of which the separate estate in which such dwelling-house, buildings and grounds have been included will be liable.

68. (1) If the Deputy Collector gives permission as aforesaid, he Amount shall certify the amount payable by the applicant in redemption of the payable in rent.

redemption of rent.

- (2) Such amount shall be ten per centum above the sum which would be required to produce, in interest at four per centum per annum, an annual sum equal to the said rent.
- 69. The amount certified under section 68 may be paid to the Such Deputy Collector at any time before, but not after, possession is, under amount section 94, given to the several proprietors of the separate estates allotted when to them.

payable.

payment to be given,

and land

to be held

rent-free.

- 70. On receipt of such payment, the Deputy Collector shall give Notice of notice to the proprietor in whose separate estate the land is situated—
 - (a) that such payment has been made;
 - (b) that the sum will be paid to him or to his authorized agent on application, and
 - (c) that, from the date on which possession as aforesaid is given, the proprietor who has redeemed the rent of such land will be entitled to hold the land as a rent-free tenure secured against the proprietor to whom the notice is given and against any auction-purchaser at a sale for arrears of revenue, including the Government;

and from such date the land shall be so held as a rent-free tenure.

71. The Deputy Collector shall at the same time give notice to the Collector Collector of the district of the creation of such tenure, and the Collector to register shall thereupon cause such tenure to be specially registered in the manner provided by section 42 of Act 11 of 1859[1] (an Act to improve the tenure. law relating to sales of land for arrears of revenue in the Lower

(Secs. 72-73.)

Provinces under the Bengal Presidency) or by any similar law for the time being in force.

Drawing of

72. When two or more of the separate estates consist of the same equal shares, proportions of the parent estate, the Deputy Collector may, if he thinks proper, direct the parties entitled thereto respectively to draw lots in his presence for the equal separate estates which have been formed by assignment of land,

> unless the recorded proprietors of the equal shares agree among themselves as to the allotment of the equal separate estates and present a petition to that effect, or

unless for any other reason the Deputy Collector, with the sanction: of the Collector, thinks proper to assign the equal separate estates to the proprietors of the equal shares without causing lots to be drawn.

Order and method of drawing lots two or more shares equals one other share, or equals the aggregate of two or more

73. (1) When the aggregate of two or more shares equals one other share, or equals the aggregate of two or more other shares, the Deputy Collector, with the sanction of the Collector, may cause such aggregate aggregate of shares to be treated as one share for the purpose of determining by lots as aforesaid which portion of the parent estate shall be assigned to each proprietor as his separate estate;

and may decide which shares shall be formed into one aggregate share for the purpose of causing such lots to be drawn;

and may cause lots to be drawn in like manner as often as he thinks other shares proper for such purpose.

> (2) After lots have been drawn once (or more than once if necessary) as aforesaid, the Deputy Collector shall proceed to divide the portion of the parent estate which has fallen by lot to each aggregate share, among the proprietors of the different shares which were formed into such aggregate share for the purpose of drawing lots, and shall assign to every such proprietor his separate estate within such portion in such position as the Deputy Collector may think proper.

Illustrations.

I.—The partition of a parent estate is being made into the following shares :-8 annas. 3 annas. 4 annas. 1 anna.

For the purposes of drawing lots, the 4 annas, 3 annas and 1 anna shares may be taken together, and considered to be an aggregate 8 annas share.

The Deputy Collector will divide the parent estate into two halves of equal value, and will then cause lots to be drawn, in order to determine which of the two halves shall be assigned to the proprietor of the integral 8 annas share, and which shall be divided among the proprietors of the 4 annas, 3 annas and 1 anna shares.

Subsequently, if necessary, the Deputy Collector may again cause lots to be drawn by the proprietor of the 4 annas share on the one hand and the proprietors on the other hand of the aggregate share made up by taking together the 3 annas share and the

II .- The partition is being made of a parent estate into the following shares :-

3 annas. 6 annas. 2 annas. 4 annas.

1 anna.

(Secs. 74-76.)

Two tracts in the estate may first be marked off, the value of each being equivalent to a 6 annas share; and then, for the purpose of drawing lots in respect of the assignment of these two tracts, the 4 annas share and the 2 annas share may be taken together as an aggregate 6 annas share, and lots may be drawn between the proprietor of the aggregate 6 annas share so formed on the one hand, and the proprietor of the integral 6 annas share on the other.

One of the two 6 annas tracts having thus been finally assigned to the proprietor of the integral 6 annas share, the Deputy Collector will proceed to assign the rest of the estate among the remaining shares; and he may again, for the purpose of causing lots to be drawn, mark off two tracts, the value of each of which shall be equivalent to 5 annas of the parent estate, and may cause lots to be drawn for these two tracts between the proprietors of the 4 annas share and the 1 anna share taken together as an aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and aggregate 5 annas share on the one hand, and the proprietors of the 3 annas share and the 2 annas share taken together as another 5 annas share on the other.

Finally, their separate estates will be assigned to the proprietor of the 4 annas share and of the 1 anna share respectively, within the tract which fell to them jointly by lot; and their separate estates will be assigned to the proprietors of the 3 annas share and of the 2 annas share respectively within the tract which fell to them jointly

74. The Deputy Collector may, by notice, require any proprietor, in Deputy respect of whose share lots are to be drawn as provided in section 72 or Collector may require section 73, to attend at the office of the Deputy Collector in person or by proprietors authorized agent, at a time to be fixed by the Deputy Collector, for the to attend or appoint purpose of drawing lots;

and may similarly require the proprietors of any shares which he the purpose of drawing may have ordered to be formed into an aggregate share for the purpose lots. of drawing lots, jointly to appoint an agent to draw lots on their joint behalf; and if at the time fixed for drawing such lots, such proprietors have failed to agree to any such joint appointment, or fail to cause the attendance of an agent authorized to act jointly for all such proprietors, all such proprietors shall be deemed to have failed to comply with the Deputy Collector's requisition.

75. If any proprietor or proprietors fail to comply with a requisition In default, of the Deputy Collector under section 74, the Deputy Collector may Collector appoint a person to draw lots on behalf of such proprietor or proprietors. may appoint

Lands held in severalty.

76. (1) When the lands of an estate have been divided by private Partition arrangement formally made and agreed to by all the proprietors, and according to each proprietor is, in pursuance of such arrangement, in possession of possession. separate lands held in severalty as representing his interest in the estate, and apportionment of the joint application presented under section 7 may be to the effect—land-

- (a) that a partition of the estate be made by assigning to each revenue. proprietor or to two or more proprietors jointly, as his or their separate estate or estates, the lands of which they are in separate possession in pursuance of such arrangement.
- (b) that each separate estate so formed be made liable for such portion of the entire land-revenue of the parent estate as was paid by the proprietor or proprietors thereof under the private arrangement aforesaid.

(Secs. 77-79.)

- (2) The Deputy Collector who is appointed to carry out the partition in accordance with such application shall satisfy himself that the assets of each separate estate which it is proposed to form will be sufficient to secure the payment of the annual amount of land-revenue for which it is proposed to make such separate estate liable.
- (3) If the Deputy Collector is not satisfied that the assets of each such separate estate will be sufficient as aforesaid, or that, with reference to the circumstances of the case, the partition of the land and the assessment of the land-revenue thereon may be made in the manner proposed without endangering the safety of the land-revenue, he shall reject the application, unless all the recorded proprietors agree that the landrevenue for which the parent estate is liable shall be apportioned among the separate estates so to be formed in such a manner that the safety of the total amount of the land-revenue shall not be endangered.

Lands of which each proprietor is in possession to be allotted to him.

77. Whenever the Deputy Collector who is appointed to carry out a partition finds that, in pursuance of a private arrangement formally made and agreed to by all the proprietors of an estate, the proprietors respectively, or any of the proprietors, are in possession of separate parcels of land held in severalty as representing portions only of their respective interests in the parent estate, while other land of the parent estate is held in common tenancy between such proprietors, then, notwithstanding anything contained in section 7, a joint application shall not be required, and the Deputy Collector shall allot to the separate estate of each proprietor the land of which such proprietor is found to be in possession in severalty in accordance with such private arrange-

Explanation.-Land held in the occupation of the several proprietors of an estate as sir, khamar or nij-jot, or under any other similar denomination, shall not be deemed to be land held in severalty as representing portions of their respective interests in the parent estate within the meaning of this section, which applies only to cases in which there has been a heart fide division, by private arrangement among the previous of there has been a bond fide division, by private arrangement among the proprietors of land, held by tenants.

Collector may cause to by parties.

78. Notwithstanding anything in section 77, the Collector may cause any transfer of land agreed to by the parties to be made from the lands agreed possession of one proprietor to that of another.

Lands held in common tenancy and Lands held in severalty.

Places of worship, etc.

79. Places of worship, burning-grounds and burial-grounds which have been held in common previous to the partition of an estate, and land of which the proceeds have been assigned by the proprietors jointly for religious, charitable or public purposes, shall continue to be held in common unless the proprietors otherwise agree among themselves, in which case they shall state in writing the agreement into which they have entered, and the Deputy Collector shall enter a note of the agreement in the paper of partition.

(Secs. 80-83.)

- 80. (1) Tanks, wells, water-courses, reservoirs and embankments Tanks, shall be deemed to be attached to the land for the benefit of which they wells, were originally made.
- (2) In cases in which, from the extent, situation or construction of reservoirs any such works, it is found necessary that they should remain the joint and property of the proprietors of two or more separate estates, the paper of ments. partition shall specify, as far as the circumstances admit, the extent to which the proprietors of each of such estates may make use of the same, and the proportion of the charges for repairs to be borne by them respectively.

81. (1) No tenure or holding shall be split up for the purposes of a Splittingpartition unless it is reasonably necessary to do so in order to effect an equitable partition.

(2) If a tenure or holding be split up as aforesaid, the total existing and rent thereof, as ascertained under Chapter VI, shall not be altered, but apportionshall be apportioned among the several parts into which the tenure or holding is divided.

(3) When it is proposed to split up a tenure or holding and apportion the rent thereof as aforesaid, the Deputy Collector shall cause a notice to be served on the tenants concerned and, after hearing their objections, if any, may order that the tenure or holding be split up, and that the rent thereof be apportioned as aforesaid.

(4) The Deputy Collector shall notify such apportionment to the tenants concerned.

82. When the Deputy Collector finds in a parent estate land which Land held is claimed to be held rent-free and for which no rent is actually paid (whether the proprietors of the estate do or do not claim a right to receive divided. rent from the land), he shall not make any division or assignment of except such land among the separate estates, but shall specify in the partition papers and proceedings that such land is left appertaining jointly to all recorded the separate estates which are formed out of the parent estate, in the proprieproportion which each separate estate bears to the parent estate:

Provided that such land or any of it may be allotted among the different separate estates with the consent of all the proprietors of the parent estate.

- 83. (1) When the Deputy Collector finds in a parent estate any land Land held which is held at a fixed rent on a patni or other permanent intermediate at fixed tenure created by all the proprietors of the estate or admitted by all the rent on recorded proprietors to have been so created, he may either-
 - (a) assign such land and the assets thereof entirely to one or more diate of the separate estates formed out of the parent estate; or
 - (b) leave such land unassigned to any separate estate, and specify in the partition paper and proceedings that the land is left appertaining jointly to all the separate estates which are

courses.

tenure or holding ment of rent thereof.

rent-free not to be consent of

permanent

(Secs. 84-85.)

formed out of the parent estate in the proportion which each separate estate bears to the parent estate.

- (2) In the event of such land being so left unassigned, the Deputy Collector shall assign to each separate estate such share of the rent of the tenure as bears the same proportion to the entire rent of the tenure as the separate estate bears to the parent estate.
- (3) In dealing with a tenure under this section, the Deputy Collector shall take into consideration the extent of the land comprised in the tenure, and all other circumstances of the case.

84. When any land is held in common between the proprietors of two or more estates, one of which is under partition in accordance with the provisions of this Act, the Deputy Collector shall first allot to the estate under partition a portion of such common land of which the assets are in proportion to the interest which the proprietors of such estate hold in the said common land;

and all the provisions of this Act in respect of the allotment, between the shareholders in one estate, of land which is held jointly by such shareholders, shall, as far as possible, apply to the allotment of the proportionate share of such common land to the estate under partition;

and, in respect of the service of notices, the hearing of objections, and all other procedure in view to such allotment, the proprietors of the estate under partition, and all other proprietors of estates who have an interest in the said common land, shall be deemed to be joint proprietors of a parent estate consisting only of the land so held in common:

Provided that all costs of any division of lands so held in common between the proprietors of two or more estates shall be deemed to be costs of making the partition of the estate which is under partition, and shall be leviable, as provided by this Act, from the proprietors of such estate; and the proprietors of any other estate having an interest in such lands shall not be required to bear any portion of such costs.

85. Notwithstanding anything contained in section 84, if it appears to the Collector that the proceedings for any such division have been unnecessarily delayed and the cost of such division enhanced, by obstacles vexatiously put in the way of the completion of such division by any proprietor of any estate other than that under partition, or by want of due diligence on the part of any such proprietor in carrying out any requisition made upon him,

the Collector may direct that such sum as he shall think fit shall be levied from every such proprietor who is responsible for such delay or additional cost;

and every sum so levied shall be taken in diminution of the amount payable by the proprietors of the estate under partition as costs of such partition.

Land held in common between the proprietors of two or more estates how to be dealt with when one estate is under partition.

When proprietors of other estates may be required to pay a portion of the costs of making a division under section 84.

(Secs. 86-88.)

- 86. Every allotment made under section 84 shall be submitted for Allotment the approval of the Collector, who may confirm, amend or reject the section 84 same, and, if he rejects it, may make or direct to be made another allot- to be subment.
- mitted to the Collector.
- 87. When any allotment made under section 84 has been approved allotted how by the Collector, the land so allotted shall be dealt with in every respect to be dealt as if it were held in common tenancy by such of the proprietors of the with. estate under partition as were found to hold interests in the common land.
- 88. (1) If a dispute or doubt is found to exist as to whether any Procedure land forms part of a parent estate, the Deputy Collector shall, after due or doubt notice to the parties interested, enquire into the fact of possession, and exists as to shall report his conclusions to the Collector; and thereupon the Collector land forms shall dispose of the matter as follows:—
- part of a
- (a) he may order that the partition case be struck off the file, if estate. such an order appears to him advisable, and whether the possession of the disputed land is with the proprietors of the parent estate or otherwise; or
- (b) he may order that the partition shall proceed, and that the disputed land be treated as part of the estate under partition, if the possession of such land is with the proprietors of the parent estate and the claim of the other parties to the right in such land appears to him untenable: or
- (c) he may order that the partition shall proceed, but that the disputed land shall not be treated as part of the estate under partition, if the possession of such land is with the other parties and the claim of the proprietors of the parent estate to the right in such land appears to him untenable:

Provided as follows:—

- (i) if a claim to land alleged to be in dispute is filed after the Deputy Collector proceeds under section 57 to determine how the lands of the parent estate shall be partitioned into the separate estates, the claim shall not be enquired into under this section unless the delay on the part of the claimant is explained to the satisfaction of the Deputy Collector:
- (ii) no partition shall be made in any case mentioned in this section if such partition would involve the assignment to any separate estate of such a quantity of the disputed land that the removal of such land from such estate at any subsequent time would, in the opinion of the Collector, endanger the safety of the land-revenue for which such estate would be liable after the partition.

(Secs. 89-90.)

(2) If a partition case is struck off the file under clause (a) of this section, no fresh application for partition shall be admitted unless and until the applicant shows that the dispute or doubt aforesaid has been decided by a Court of competent jurisdiction, or has been amicably settled; but, if a fresh application is admitted, the proceedings shall be revived from the point at which they were interrupted.

Procedure when partition pursuance of order under section 88, clause (b), and proprietor of an estate dispossessed of any land by decree.

89. If, after a partition has been completed in pursuance of an order passed by the Collector under section 88, clause (b), the proprietor of completed in any separate estate is dispossessed by a decree of a Court of competent jurisdiction of any land which has been assigned to his estate by the partition,

> the partition shall not be disturbed, but such proprietor shall be entitled to recover from the proprietors of the other separate estates formed by the partition such compensation as may be fair and equitable, having regard to the reduction in the proportionate value of his separate estate which is caused by such dispossession;

> and such compensation may be recovered in a Court of competent jurisdiction from the proprietors of those separate estates on which a proportionate share of the total loss caused by the dispossession does not fall.

CHAPTER X.

PROCEDURE BEFORE THE COMMISSIONER UP TO THE COMPLETION OF A PARTITION.

Procedure if proceedings require amendment, or if appeal or objection presented.

- 90. (1) If it appears to the Commissioner that the proceedings of the Collector should be amended, or if an appeal or objection is presented within the time allowed by section 61, the Commissioner shall, by order, fix a day (not being less than thirty days from the date of such order) for hearing and disposing of the case, and shall cause notice of such day to be served through the Collector on all the parties.
- (2) On the day so fixed, or on any subsequent day to which the hearing of the case may extend or is postponed by a notice posted up in his own office, the Commissioner shall, after hearing and disposing of all appeals and objections, and calling for any further information which he may consider necessary, either confirm the partition as approved or made by the Collector, with or without amendments, or return the papers of the partition to the Collector for any amendments which the Commissioner may think proper to be made.
- (3) If the papers are returned to the Collector for amendment, the Collector shall proceed to make the required amendments or to cause them to be made in the same manner as if he had himself passed such orders on a partition submitted to him for approval by a Deputy

(Secs. 91-94.)

Collector, and shall thereafter return the papers to the Commissioner, who may then confirm the partition.

91. If it does not appear to the Commissioner that the proceedings Procedure in of the Collector require amendment, or if no appeal or objection is pre-other cases. sented within the time allowed by section 61, the Commissioner may proceed to consider the case without issuing any notice, and may con-

firm the partition as approved or made by the Collector. 92. The Commissioner may, before confirming a partition, return Commisthe papers for amendment or enquiry as often as he thinks fit, and as sioner may often as he so returns them the procedure prescribed in the foregoing papers for sections of this Chapter shall be applicable.

amendment or enquiry as often as he thinks

93. (1) After the expiration of not less than sixty days from the Procedure by date of the order of the Commissioner confirming a partition,

or if an appeal has been preferred to the Board, or if any proceedings Commisin respect of the partition be pending before the Board, then on receipt sioner's of the final order of the Board, if such order does not set aside but main-confirming, tains, with or without amendments, the partition as confirmed by the or Board's sanc-Commissioner,

receipt of tioning, a partition.

the Collector shall cause to be published at his office, and at some conspicuous place in each of the estates separately constituted by the order of the Commissioner or the Board, as the case may be, a notice that the partition has been confirmed or sanctioned by the Commissioner or the Board, with or without amendments, as the case may be.

(2) If the partition as so confirmed or sanctioned involves any amendments which may conveniently be made on any extracts of the partition paper or on any maps which have been prepared and delivered to recorded proprietors under section 59, the Collector shall cause a notice to be served on every recorded proprietor whose estate is affected by such amendments, requiring him to produce such extracts and maps in order that such amendments may be noted on them;

and, if the alterations made in the partition as so confirmed or sanctioned be such as to make it desirable to prepare fresh extracts or maps as aforesaid, the Collector shall cause such fresh extracts or maps to be prepared; and shall cause a notice to be served on each proprietor declaring the extract and map which was delivered under section 59 to be cancelled, and requiring him to take out of the Collector's office the fresh extract or map which has been prepared.

94. (1) The Collector shall then proceed to give the several pro- Procedure prietors possession of the separate estates allotted to them, and, if neces- as to giving sary, may require the assistance of the Magistrate in giving such possession of separate sion:

(Secs. 95-97.)

and shall cause to be served on every recorded proprietor of a separate estate a notice-

(a) informing him that from the date specified in such notice the separate estate assigned to him, as described in the extract from the partition paper prepared and delivered or tendered to him under section 59 or section 93, as the case may be, will be deemed to be separated from the parent estate, and to be separately liable for the amount of landrevenue specified in the notice, and

(b) calling upon him to enter into a separate engagement for the payment of such land-revenue.

(2) The date specified in such notice shall be not more than three months after the proprietors have been given possession of their respective separate estates as provided in sub-section (1).

Each sepa-95. From the date specified in such notice, each separate estate shall rate estate be borne on the revenue-roll and General Register of the Collector as a to be borne distinct estate separately liable for the amount of land-revenue assessed on the revenue-roll and upon it under this Act, and shall be so liable whether or not the pro-General prietor has entered into a separate engagement for the payment of the Register as separately liable for the amount of land-revenue so assessed upon the estate. landrevenue assessed

- **96.** (1) The Collector may direct the erection of such boundary marks as he thinks proper, to distinguish the lands of each separate estate; and the cost of such boundary marks shall be deemed to be costs of the partition.
- (2) Boundary marks so erected shall be assigned to zamindars, or to zamindars jointly with tenure-holders, for preservation, as provided in the third clause of section 29 of the Bengal Survey Act, 1875;[1] and, after they have been so assigned, the provisions of sections 19, 20 and 52 of 1875. to 57 (both inclusive) of the said Act shall apply in the case of such boundary marks.

CHAPTER XI.

MISCELLANEOUS.

Powers of Deputy Collector as to production ance of witnesses.

upon it. Boundary

marks.

97. For the purposes of any inquiry under this Act, the Deputy Collector shall, in addition to the powers specifically conferred upon him by this Act, have the powers conferred by Chapters X and XIV of the of documents Code of Civil Procedure[2] for compelling the production of documents

14 of 1882. and enforcing the attendance of witnesses.

[1] Printed ante, p. 169. [2] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to sections 30, 31 and 32 of, and Orders XI, XII, XIII and XVI in Schedule I to, that Code-see s. 158 thereof.

(Secs. 98-101.)

98. The Deputy Collector, with the consent of all the parties con-General cerned, may refer to arbitration[1] any point arising in the course of a refer to partition; and the provisions of sections 52, 53 and 54 shall, as far as arbitration. possible, be applicable to such references.

99. If any proprietor of an estate held in common tenancy and Saving of tenures, brought under partition in accordance with this Act has given his share leases and or a portion thereof in patni or other tenure or on lease, or has created incumbrances. any other incumbrance thereon, such tenure, lease or incumbrance shall hold good as regards the lands finally allotted to the share of such proprietor, and only as to such lands.

Illustrations.

I.-A, the proprietor of a quarter share in a joint undivided estate held in common tenancy, gives to B a patni tenure of the whole of his interest in the estate entitling B, as long as such estate is held in common tenancy, to collect one-fourth of the rent payable by every raiyat on the estate; and partition of the said estate is made under this Act, and certain specific lands are

assigned to A as his separate estate.

B will become patnidar of the entire separate estate which has been assigned to A, and will be entitled to collect the whole of the rents from the raiyats on that estate.

II.—A, a proprietor of a quarter share in a joint-undivided estate held in common tenancy, gives to B a patni tenure of one-half of his share in the estate, entitling B, as long as such estate is held in common tenancy, to collect one-eighth of the rent payable by every raiyat on the estate; and

partition of the estate is made under this Act, and certain specific lands are assigned

to A as his separate estate.

B will become patnidar of one half of A's separate estate, and will hold his patni in common tenancy with the half of A's interest which A has not given in patni, so that B will be entitled to collect one-half of the rent payable by every raiyat on A's estate, and A will be entitled to collect the other half.

100. (1) If two or more estates come into the possession of one Uniting of proprietor or of the same body of proprietors, such proprietor or body estates. of proprietors may, after being recorded as proprietors, apply to have the estates united and to hold them as a single estate.

(2) Every such application shall be made in writing to the Collector, and the Collector shall, if he sees no objection to doing so, comply with it not less than thirty days after the publication of a notification thereof, and shall then cause the necessary entries to be made in the records of his office and report the case to the Commissioner.

101. If any separate estate created under this Act falls into arrear so If separate as to necessitate a sale of the land for the discharge of the arrear at any estate falls time within six years from the date of the confirmation or sanction of the Collector to partition by the Commissioner or the Board, [2] as the case may be.

enquire into

the Collector shall, if possible, ascertain the cause of the estate report to having fallen into arrear, and shall inquire whether the same is due to commis-

[1] As to arbitration, see the Indian Arbitration Act, 1899 (9 of 1899), in General Acts, 1898-1909, Ed. 1928, p. 153.

^[2] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act I of 1913), printed in Vol. III of this Code.

(Secs. 102-104.)

any fraudulent or erroneous allotment of the assessment or assignment of lands at the time of the partition, and shall make a report upon the case to the Commissioner for such action as the Commissioner may think proper.

Power of Lieutenantallotment the landrevenue.

102. If it is proved to the satisfaction of the [Board][1] at any time Governor to within six years from the date of the confirmation or sanction of a order a new partition by the Commissioner or the Board, [2] as the case may be, whether or not upon inquiry made under section 101, that through any fraud or error at the time of making the partition the assets of the lands assigned to any separate estate were not in proportion to the amount of land-revenue for which such estate was made liable, or that the amount of land-revenue assessed on any separate estate was not in proportion to the assets of the lands assigned to such estate,

> the [Board][1] may order a new allotment of the land-revenue upon the separate estates in accordance with the principles prescribed in this Act, on an estimate of the assets of each such estate as they stood at the time of the partition, such estimate being made on such evidence and information as may be procurable.

Power to require preprietors of under-assessed estates to make refund to proprietors of over-asses-

- 103. (1) Whenever the [Board][1] passes an order under section 102 for the re-allotment of the land-revenue on any separate estate, [it][3] may direct that the proprietors whose estates are found to have been under-assessed, shall for each year during which they have held possession of the separate estates, be required to pay, to the recorded proprietors of the estates which have been over-assessed, a sum equal to sed estates. the annual amount in which the latter are found to have been overassessed; and in default of payment such sum shall be recoverable as provided in section 108.
 - (2) No order passed by the [Board][1] under sub-section (1) shall be liable to be contested in any Court.

Publication of notifications.

- 104. Every notification required by this Act to be published shall, unless it is otherwise specially directed, be published by posting up copies of the same-
 - (a) at the office of the Collector,
 - (b) at the office of the Deputy Collector who is to make, is making or has made the partition,

^[1] The word "Board" was substituted for the words "Lieutenant-Governor" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and

Sch., Pt. II, printed in Vol. III of this Code.

[2] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in

^[3] The word "it" was substituted for the word "he" by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Sch., Pt. II, printed in Vol. III of this Code.

(Secs. 105-107.)

- (c) at the village office or village offices, if any, of the proprietors of the parent estate, and
- (d) in one or more of the principal villages in the said estate.
- 105. (1) Any notice required by this Act to be served on any person Service of may be served—
- (a) by delivering the notice to the person to whom it is directed, or, on failure to effect such delivery, by posting it on some conspicuous part of the house in which the said person usually resides; or
- (b) by sending a registered letter, containing the notice, to such person, directed to the address, if any, which he has registered under this Act; or
- (c) by delivering the notice to a general agent of the person to whom it is directed, or to any person who has been appointed in that behalf, or who has been appointed an agent of the person to whom the notice is directed for the general purposes of any partition under this Act; or
- (d) by affixing a copy of the notice at the village office of the person to whom the notice is directed;
- or, if no such village office be found, and if the notice cannot be served in any of the other modes mentioned in this section, by affixing a copy of the notice on some conspicuous place on the estate to which the notice relates.
- (2) Where two or more persons are joint applicants for the separation of an estate to be held by them jointly as a separate estate, the service of a notice in any of the modes mentioned in sub-section (1), on any one of such joint applicants shall be deemed to be good and sufficient service on both or all of them.
- 106. If the directions of this Act are in substance and effect Mistakes and complied with, no proceedings thereunder shall be affected-

irregularities not to

- (a) by reason of any mistake or informality unless any person has vitiate prosuffered, or is in danger of suffering material injury in consequence of such mistake or informality; or
- (b) by reason of the omission to publish any notification required by this Act, or to serve any notice on any person whose name is not recorded on the Collector's registers as proprietor of the estate in respect of which the notice is required by this Act to be served.
- 107. If any proprietor or other person fails to comply, within the Fine in case time fixed therefor by notice, with any requisition made upon him under of non-comthis Act by the Collector, or Deputy Collector, the Collector or Deputy requisition. Collector, as the case may be, may impose upon him such daily fine as he may think fit, not exceeding fifty rupees;

and such fine shall be payable daily until the requisition is complied with: `

(Secs. 108-111.)

and the Collector or Deputy Collector, as the case may be, may proceed from time to time to levy the amount which has become due in

respect of any such fine:

Provided that, whenever the amount payable exceeds five hundred rupees, the Collector shall report the case specially to the Commissioner, and no further levy in respect of the fine shall be made otherwise than by the authority of the Commissioner.

Fees, etc., to be recoverable as public demands.

108. Except as herein otherwise expressly provided, all fees, fines, costs and other sums ordered under this Act to be paid by any person shall be deemed to be public demands, and shall be recoverable under the Public Demands Recovery Act, 1895.[1]

Ben. Act 1 of 1895.

Powers and functions of lector may be exercised by Collector.

109. All or any powers and functions which are assigned by this Deputy Col- Act to a Deputy Collector may be exercised and discharged by the Collector;

> and whenever it is provided by this Act that any act done or order made by a Deputy Collector shall require the sanction of the Collector, or shall be appealable to the Collector, then if such act has been done, or such order has been made, by the Collector, it shall be deemed to have been sanctioned by the Collector or to have been confirmed by the Collector in appeal, as the case may be.

Power to vest Deputy Collector with settlement powers.

- 110. (1) The [Board][2] may vest any Collector or Deputy Collector Collector or with all or any of the powers which, under the provisions of any law for the time being in force, might be exercised by them respectively, or might be conferred on them respectively, if they were making a settlement of a parent estate.
 - (2) Such powers may be conferred either generally in respect of all estates in the partition of which the Collector or Deputy Collector may at any time and in any district be engaged, or specially in respect of any particular estate.

Appeals to the Collector and admission by him of objections.

- 111. (1) An appeal, if presented within one month from the date of the order appealed against, shall lie to the Collector against every order of a Deputy Collector—
- (a) directing, under section 39, by whom or how the costs of an inquiry held in consequence of an objection raised shall be paid;
- (b) made under section 47, sub-section (3), declaring what entry in a record of existing rents and other assets of land shall be accepted for the purposes of the partition:

by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and

Sch., Pt. II, in Vol. III of this Code.

^[1] Ben. Act 1 of 1895 has been repealed and re-enasted by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. and O. Act 4 of 1914), s. 2, printed in Vol. III of this Code, and this reference should now be construed as a reference to the latter Act—see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 10, printed in Vol. III of this Code.

[2] The word "Board" was substituted for the words "Lieutenant-Geverner"

(Sec. 112.)

- (c) made under section 50, adopting a record of existing rents and other assets of land;
- (d) refusing, under section 51, to allow recorded proprietors to make a partition privately among themselves or by arbitration;
- (e) rejecting, under section 76, sub-section (3), an application for partition according to separate possession;
- (f) directing, under section 81, sub-section (3), that a tenure or holding be split up, and that the rent thereof be apportioned; or
 - (g) imposing a fine under section 107.
- (2) Objections to any other orders passed by the Deputy Collector shall only be admitted by the Collector if made when he proceeds to consider a partition under section 58.
- 112. (1) An appeal, if presented to the Commissioner, or to the Appeals to Collector for transmission to the Commissioner, within one month from the Commissioner, and the date of the order appealed against, shall lie to the Commissioner admission by him against every order of a Collector (whether such order be passed by the of objective collector in the first instance or in appeal from the order of a Deputy tions.
- (a) rejecting an application for the partition of an estate or for the separation of a share, or putting an end to proceedings for effecting a partition or separation after the application has been admitted;
- (b) directing, under section 29, that an application for partition or separation be admitted;
- (c) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition;
- (d) made under section 50, adopting a record of existing rents and other assets of land;
- (e) refusing, under section 55, to approve a partition made by proprietors or by an arbitrator or arbitrators;
- (f) refusing to allow a partition to be made under section 76 in accordance with separate possession;
- (g) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition;
- (h) confirming, amending or rejecting, under section 86, an allotment made under section 84;
- (i) made under section 88, when a dispute or doubt exists as to whether any land forms part of a parent estate;
- (j) imposing or confirming the imposition of a fine under section 107; or
- (k) imposing any fine amounting to more than fifty rupees, or directing the payment of any costs amounting to more than fifty rupees.

(Secs. 113-114.)

(2) Objections to any other orders passed by the Collector shall only be admitted by the Commissioner if made when he proceeds to consider a partition under section 90 or section 91.

Appeals to the Board.

- 113. An appeal, if presented to the Board[1], or to the Commissioner for transmission to the Board[1], within six weeks from the date of the order appealed against, shall lie to the Board[1] against every order of the Commissioner—
- (a) confirming, modifying or reversing any order of the Collector rejecting an application for the partition of an estate, or putting an end to proceedings for effecting a partition after the application has been admitted;
- (b) confirming, modifying or reversing any order of the Collector directing, under section 29, that an application for partition be admitted;
- (c) confirming or amending a partition as approved or made by the Collector; or
- (d) imposing, or confirming the imposition of, any fine amounting to five hundred rupees, or ordering or confirming an order directing the payment of any costs amounting to more than five hundred rupees.
- 114. (1) Except in the cases mentioned in section 113, when an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is upheld by the Commissioner, no further appeal shall lie; but the Board[1], acting either on the application of the party aggrieved or of their own motion, may call for the record of the case and pass such order as they think fit.
- (2) When an order of a Collector, whether passed by him in the first instance or in appeal from the order of a Deputy Collector, is modified or reversed by the Commissioner, a further appeal shall lie to the Board[1] in the following cases only, namely, when the order of the Collector was one—
- (a) directing, under section 38, that any proprietor shall pay more than his proportionate share of the cost of a partition, when the excess which he is ordered to pay exceeds five hundred rupees;
- (b) made under section 50, adopting a record of existing rents and other assets of land;
- (c) directing, under section 85, that any sum exceeding five hundred rupees shall be levied from the proprietor of an estate not under partition; or
- (d) confirming, amending or rejecting, under section 86, an allotment made under section 84.

Limitation of appeals; revision by Board; further appeal to Board.

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. & O. Act 1 of 1913), printed in Vol. III of this Code.

(Secs. 115-119.)

115. When an appeal is presented under section 111, section 112 or Stay of prosection 113, or when the Board[1] calls, under section 114, sub-section pending (1), for the record of a case, the proceedings shall not be stayed pending appeal or revision. the appeal or revision unless the appellate or revising authority so directs.

116. (1) Any proceedings of a Deputy Collector, Collector or Revision of Commissioner connected with giving possession to the proprietors of connected their respective separate estates in pursuance of section 94 may be set with giving aside or amended by the Collector, Commissioner or Board[1], as the possession. case may be, provided that the revising authority shall, within three months from the date on which such possession has been given, make an order to the effect that such proceedings are under its consideration.

- (2) Every such order shall, when made by the Commissioner or the Board[1], be communicated to the Collector of the district, and the Collector shall cause all such orders to be published by notification.
- 117. The Collector, the Commissioner and the Board[1] respectively Orders as to may pass such orders as they think fit in respect of the payment of the appeal. costs of any appeal which is made to them respectively under this Act.

118. If, in any case in which a Collector or other officer exercises Powers of officers jurisdiction under this Act, any person is guilty of the offence of giving exercising or fabricating false evidence, or of forgery, as defined in the Indian jurisdiction under this Penal Code, or of abetting any of those offences, such Collector or Act with other officer shall have the same powers in respect of such offence, and regard to of the person charged with committing the same, as are vested by the evidence, Code of Criminal Procedure, 1882,[2] in a Civil Court when any such or forgery. offence is committed before or against such Court, or when a document believed to be a forgery is given in evidence in any proceeding in such Court.

10 of 1882.

45 of 1860.

119. No order—

(a) refusing to admit an application for partition, or to carry out a Certain orders under partition, on any of the grounds mentioned in section 11; or

this Act not liable to be

(b) made under section 20, section 30, Chapter V, Chapter VII, contested or Chapter VIII, Chapter IX (except section 81), Chapter X, section 107 set aside by or section 117,

shall be liable to be contested or set aside by suit in any Court, or by any means other than those expressly provided in this Act:

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

^[2] Act 10 of 1882 has been repealed and re-enacted by the Code of Criminal Procedure, 1898 (5 of 1898), and this reference should now be taken to be made to that Code-see s. 3 (1) thereof.

(Secs. 120-121.)

Provided that—

- (i) any person claiming a greater interest in lands which were held in common tenancy between two or more estates than has been allotted to him by an order under section 84 or section 86; or
- (ii) any person who is aggrieved by an order made under section 88, may bring a suit in a Court of competent jurisdiction to modify or set aside such order.

120. In the execution of the duties imposed on the Board[1] by Board to be guided by this Act, the Board[1] shall be guided by such orders or instructions as orders or instructions they may from time to time receive from the Lieutenant-Governor. Lieutenant-Governor.

Power of Board to

- 121. The Board[1] may from time to time, with the previous make rules, sanction of the Lieutenant-Governor, make rules, [2]—
 - (a) prescribing, in pursuance of section 18, clause (g), particulars to be contained in applications for partition;
 - (b) for regulating the appointment of persons under section 35 and the scale of their remuneration, and for enabling an officer making a partition to keep himself informed of the proceedings of such persons and to exercise a proper control over them;
 - (c) for determining the costs of partitions;
 - (d) for fixing, for the purposes of section 37, the instalments in which and the times at which the cost of making partition shall be levied from proprietors:
 - (e) for fixing a general scale of fees for the levy of charges from proprietors of estates under partition, when the formation of an Estates Partition Fund has been directed under section 42;
 - (f) for fixing the instalments in which and the times at which the said fees shall be levied from proprietors;
 - (g) generally, for regulating the receipts, disbursements and management of any Estates Partition Fund formed under the said section 42:
 - (h) prescribing what entries in the record of existing rents and other assets shall be read out and, when necessary, corrected or added to. under section 47, sub-section (2);
 - (i) prescribing the manner in which and the period for which copies of survey papers and records of existing rents and other assets shall be published under section 48;

[2] For a reference to rules made under section 121, for Bihar and Orissa, see the

Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

(Sec. 121.)

- (j) prescribing the entries in survey papers or records of existing rents and other assets of which copies shall be furnished to landlords and tenants under the said section 48;
- (k) prescribing the form of partition papers to be delivered under section 53 or prepared under section 57; and
- (l) generally, for the guidance of officers in conducting partitions or making a survey and preparing a record of existing rents and other assets of land under this Act.

BENGAL ACT 3 OF 1898.

THE BENGAL TENANCY (AMENDMENT) ACT, 1898.]

CONTENTS.

SECTION.

- 1. Short title.
 - (Commencement). Repealed.
 - 2. Amendment of Act 8, 1885, section 30.
 - 3. Amendment of Act 8, 1885, section 31.
 - 4. Insertion of sections 31A and 31B in Act 8, 1885.
 - 5. Amendment of Act 8, 1885, section 39 (6).
 - 6. Amendment of Act 8, 1885, section 52.
 - 7. New Chapter X for Act 8, 1885.
 - 8. Validation of publication of past records.
 - Effect of settlements of rent and decisions by Revenue-officers made before the commencement of this Act.
- 10. Amendment of Act 8, 1885, section 119.
- 11. (Repealed.)

BENGAL ACT 3 OF 1898.

THE BENGAL TENANCY (AMENDMENT) ACT, 1898. [1]

(2nd November, 1898.)

An Act to amend sections 30, 31, 39, 52 and 119 and Chapter X of the Bengal Tenancy Act, 1885.[2]

Whereas it is expedient to amend sections 30, 31, 39, 52 and 119 8 of 1885. and Chapter X of the Bengal Tenancy Act, 1885, [2] in the manner hereinafter appearing;

And whereas, the said Act having been passed by the Governor General of India in Council, the previous sanction of the Governor General has been obtained, under section 5[3] of the Indian Councils Act, 1892, to the requisite amendments being made by an Act of the Vict., c. 14. Lieutenant-Governor of Bengal in Council;

And whereas the sanction of the Governor General has similarly been obtained to the amendment of the Court-fees Act, 1870,[4] which 7 of 1870. is proposed by section 7 (105) of this Act;

It is hereby enacted as follows:—

- 1. (1) This Act may be called the Bengal Tenancy (Amendment) Short title. Act, 1898; [5]
- (2) (Commencement.) Rep. by the Amending Act, 1903 (1 of 1903)[5].

8 of 1885.

55 and 56

2. For clause (a) of section 30 of the Bengal Tenancy Act, 1885,[2] Amendment the following shall be substituted, namely:--

(a). [Printed on p. 416 in Vol. I of this Code.]

of Act 8, 1885, section 30.

The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code, and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

The whole of this Act has been repealed for the Orissa Division by the Orissa Tenancy Act, 1913 (B. & O. Act 2 of 1913), s. 2 and Schedule I, printed in Vol. III of this Code.

[2] Printed in Vol. I of this Code.

[3] See now s. 80A of the Government of India Act. [4] Printed in General Acts, 1834-72, Ed. 1928, p. 282.

[5] The word "and" in sub-section (1) and sub-section (2) of section 1 were repealed by the Amending Act, 1903 (1 of 1903), Sch. III—see Vol. I of this Code.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1897, Pt. IV, p. 107; for Report of Select Committee, see *ibid*, 1898, Pt. IV, p. 515; and for Proceedings in Council, see *ibid*, 1897, Supplement, pp. 1213, 1688, *ibid*, 1898, Supplement, pp. 529, 670 and 762.

704 The Bengal Tenancy (Amendment) Act, 1898. [Ben. Act 3 of 1898.]

(Secs. 3-11.)

Amendment **3.** After clause (d) of section 31 of the said Act the following shall of Act 8, 1885, section be inserted, namely: --

(e), (f). [Printed on p. 417 in Vol. I of this Code.]

4. After section 31 of the said Act the following shall be inserted, Insertion of sections 31A and 31B in namely :-

31A, 31B. [Printed on pp. 418-419 in Vol. I of this Code.]

Amendment of Act 8. 1885, section 39(6).

Amendment of Act 8,

1885, sec-

tion 119.

Act 8, 1885.

5. After the word "correct" in sub-section (6) of section 39 of the said Act, the words "and may presume that the prices shown in the lists prepared for any year prior to the passing of this Act are correct " shall be inserted.

Amendment 6. To section 52 of the said Act the following shall be added, of Act 8. 1885, section namely :-(5) [Printed on p. 428 in Vol. I of this Code.]

New chapter 7. For Chapter X of the said Act the following shall be substituted, X for Act 8, namely:-1885.

Chapter X[2]. [Printed on pp. 447-466 in Vol. I of this Code.]

Validation 8. All records published under section 105 of the Bengal Tenancy of publication of past Act, 1885,[1] before the commencement of this Act, whether in draft 8 of 1885. records. or final form, shall be deemed to have been duly published.

Effect of 9. (1) Every settlement of rent or decision of a dispute by a settlements of rent and Revenue-officer under section 104 or section 106 of the Bengal Tenancy decisions by Act, 1885, [1] before the commencement of this Act, in respect of which 8 of 1885. Revenueofficers made no appeal has, before the commencement of this Act, been preferred to before the the Special Judge appointed under section 108 of that Act, shall have the commencement of this force and effect of a decree of a Civil Court in a suit between the parties, Act. and shall be final:

Provided that an appeal shall lie to the District Judge from any such settlement or decision which was made or given within thirty days before the commencement of this Act, if the appeal be presented within thirty days from the date of such settlement or decision.

(2) The provisions of the Code of Civil Procedure[8] relating to 14 of 1882. appeals shall, as nearly as may be, apply to all such appeals.

10. In section 119 of the Bengal Tenancy Act, 1885[1] the words 8 of 1885. and figures "section 103A, 103B, 106, 107, 108, 109 and 109A" shall be substituted for the words and figures " sections 105 to 109, both inclusive ".

11. (Repeal of Bengal Act 5, 1894.) Rep. by the Amending Act. 1903 (1 of 1903).

[1] It is printed in Vol. I of this Code.

^[2] For subsequent amendments to chapter X see ss. 19-38 of the Bengal Tenancy

⁽Amendment) Act, 1907 (Ben. Act 1 of 1907), post pp. 780—782.

[3] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

BENGAL ACT 2 OF 1899.

(THE BENGAL CIVIL COURT AMINS ACT, 1809.)

CONTENTS.

SECTION.

1. Repeal of Act 12 of 1856.

BENGAL ACT 2 OF 1899.

(THE BENGAL CIVIL COURT AMINS ACT, 1899.)[1]

(25th October, 1899.)

An Act to repeal Civil Courts Amins Act, 1856, in Bengal.

12 of 1856. Whereas it is expedient to repeal the Civil Courts Amins Act, 1856, so far as it applies to Bengal;

It is hereby enacted as follows:-

1. The Civil Courts Amins Act, 1856[1] is hereby repealed Repeal of throughout Bengal:

Act 12 of 1856.

Provided as follows:-

- (a) this repeal shall not affect any appointment already made under the said Act, and
- (b) the persons holding such appointments shall perform such duties as may be required of them by the District Judge.

LOCAL EXTENT.—This Act is expressed to apply to the whole of the former Province of Bengal.

The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

^[1] SHORT TITLE.—This short title was given by the Amending Act, 1903 (1 of 1903), Sch. I—see Vol. I of this Code.

LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1899, Pt. IV, p. 613; and for Proceedings in Council, see *ibid*, 1899, Supplement, pp. 1560, 1907; *ibid*, January, 1900, Special Supplement, pp. 140 and 251.

BENGAL ACT 3 OF 1900.

(THE BENGAL CRUELTY TO ANIMALS ACT, 1900.)

CONTENTS.

SECTION.

- 1. Amendment of section 1 of Ben. Act 1 of 1869.
- 2. Amendment of section 5 of Ben. Act 1 of 1869.
- 3. Short titles.

BENGAL ACT 3 OF 1900.

(THE BENGAL CRUELTY TO ANIMALS ACT, 1900.)[1]

(9th May, 1900.)

An Act to amend Bengal Act 1 of $1869\lceil^2\rceil$ (an Act for the prevention of cruelty to animals).

Whereas it is expedient to amend Bengal Act 1 of 1869[2] (an Act for the prevention of cruelty to animals);

It is hereby enacted as follows:—

- 1. For section 1 of Bengal Act 1 of 1869[2] (an Act for the prevention Amendment of cruelty to animals) the following shall be substituted, namely:—
 - 1. [Printed ante, p. 99.]

of section 1 of Bengal Act 1 of 1869.

- 2. For section 5 of the said Act the following shall be substituted, Amendment namely:-
 - 5 to 5C. [Printed ante, pp. 100-101.]

of section 5 of Bengal Act 1 of 1869.

- 3. (1) This Act may be called the Bengal Cruelty to Animals Act, Short titles. **1900.**
- (2) This Act, the aforesaid Bengal Act 1 of 1869, [2] and Bengal Act 3 of 1869[8] (an Act to enable Police-officers to arrest without warrant persons guilty of cruelty to animals) may be cited together as the Bengal Cruelty to Animals Acts, 1869 to 1900.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1900, Pt. IV, p. 2; and for Proceedings in Council, see ibid, January, 1900, Special Supplement, p. 555; February, 1900, pp. 7, 11, 41 and 68. The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws

Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

[2] The Bengal Cruelty to Animals Act, 1869. It is printed ante, p. 99.

[3] The Bengal Cruelty to Animals (Arrest) Act, 1869. It is printed ante, p. 113

BENGAL ACT 2 OF 1902.

[THE BENGAL DRAINAGE (AMENDMENT) ACT, 1902.]

CONTENTS.

SECTION.

1. Short title.

PART I.

AMENDMENT OF THE BENGAL DRAINAGE ACT, 1880.

- 2. Amendment of section 3, Bengal Act 6 of 1880.
- 3. Amendment of section 26, and insertion of new section, 26A.
- 4. Amendment of section 28.
- 5. Repeal of section 29 and portions of sections 30, 31, 38 and 42 to 44.
- 6. Insertion of new section 36A.
- 7. Amendment of section 37.
- 8. Insertion of new part, IVA.
- 9. Insertion of new sections, 44A and 44B.
- 10. Amendment of section 45.
- 11. Amendment of section 48.
- 12. Insertion of new sections, 51A to 51J.
- 13. Amendment of Schedule B.

PART II.

BENGAL ACT 2 OF 1902.

THE BENGAL DRAINAGE (AMENDMENT) ACT, 1902. [1]

(1st October, 1902.)

section 29

of sections 30, 31, 38 and 42 to

and portions

An Act to amend the Bengal Drainage Act, 1880.[2]

Ben. Act 6 of 1880.

Whereas it is expedient to amend the Bengal Drainage Act, 1880[2] in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. This Act may be called the Bengal Drainage (Amendment) Act, Short title. 1902.

PART I.

AMENDMENT OF THE BENGAL DRAINAGE ACT, 1880.[2]

- 2. In section 3 of the Bengal Drainage Act, 1880,[2] after the Amendment definition of "Collector" the following shall be inserted, namely:-Bengal Act [Printed ante, p. 336.] 6 of 1880.
- 3. For section 26 of the said Bengal Drainage Act, 1880, [2] the Amendment of section following shall be substituted, namely:-26 and inser-26, 26A. [Printed ante. p. 344.] tion of new section, 26A.
- 4. In section 28, sub-section (2), of the said Act, for the words Amendment and figures "the interest mentioned in section 26" the word "interest" of section shall be substituted.
- 5. The following portions of the said Act are hereby repealed, Repeal of namely :-

section 29,

in section 30, the figures and word "26 or,"

in section 31, the words "upon such sums at five per centum per annum," and the words and figures " and any interest payable under section 29, and any interest payable under clause (1) of section 26, but not paid or recovered before the apportionment under section 28,"

The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code; and
the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1889 (3 of 1899), s. 3, printed in Vol. I of this Code. [2] Printed ante, p. 335.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1902, Pt. IVA, p. 7; for Report of Select Committee, see ibid, Pt. IV, p. 9; and for Proceedings in Council, see ibid, Pt. IVA, pp. 13, 49, 86 and 90.

(Secs. 6-13.)

in section 38, the words "thereupon at five per centum per annum,"

in clause (b) of section 42, and in clause (b) of section 43, the words "at the rate of five per centum per annum," and

in sub-section (3) of section 44, the words "at five per centum per annum."

Insertion of new section, 36A.

6. After section 36 of the said Act the following shall be inserted, namely:--

36A. [Printed ante, p. 348.]

Amendment of section 37.

7. (1) In section 37 of the said Act,

for the words "its service" the words "the service thereof" shall be substituted, and

for the words "at the rate of five per centum per annum" the words "up to the day of payment" shall be substituted.

(2) The words "at the said rate," in the said section 37, are hereby repealed.

Insertion of new part, IVA.

8. After section 41 of the said Act the following shall be inserted, namely:---

PART IVA. [Printed ante, pp. 350-351.]

Insertion of new sections, 44A and 44B.

9. After section 44 of the said Bengal Drainage Act, 1880,[1] the Ben. Act 6 following shall be inserted, namely:—

44A, 44B. [Printed ante, p. 353.]

Amendment of section 45.

10. In section 45 of the said Act, after the figures "43" the words and figures " or under section 44A" shall be inserted.

Amendment of section 48.

11. (1) At the end of sub-section (1) of section 48 of the said Act the following shall be added, namely:-

[Printed ante, p. 355.]

(2) In sub-section (3) of section 48 of the said Act, for the word "five" the word "four" shall be substituted.

Insertion of new sections namely :-51A to 51J.

12. After section 51 of the said Act the following shall be inserted,

51A to 51J. [Printed ante, pp. 356-359.] Amendment

of Schedule

B.

13. (1) In Schedule B to the said Bengal Drainage Act, 1880,[1] Ben. Act 6 of 1880. for the word "five" the word "four" shall be substituted.

(2) To the said Schedule the following shall be added, namely: [Printed ante, p. 362.]

PART II.[2]

^[1] Printed ante, p. 335. [2] Part II containing ss. 14 to 19 do not apply to Bihar and Orissa and are, therefore, omitted.

BENGAL ACT 1 OF 1903.

[The Bengal Tenancy (Validation and Amendment) Act, 1903.]

CONTENTS.

SECTION.

- 1. Validation of transfers of tenures and holdings and shares in the same.
- 2. Realization of fee when left unpaid.
- 3. Saving of section 88.
- 4. Substitution of a new section for section 106.
- 5. Short title.

BENGAL ACT 1 OF 1903.

[The Bengal Tenancy (Validation and Amendment) Act, 1903.][1] (25th February, 1903.)

8 of 1885. An Act to validate certain transfers, made under the Bengal Tenancy Act, 1885, [2] of permanent tenures and holdings at fixed rents or fixed rates and of shares in the came; and to amend section 106 of that Act.

Whereas doubts and difficulties have arisen respecting the meaning and effect of sections 12, 13, 17 and 18 of the Bengal Tenancy Act, 8 of 1885. 1885, [2] as regards the payment of the prescribed landlord's fee and the effect of the non-payment of such fee;

> And whereas it is expedient to declare that registered transfers and sales and decrees or orders for foreclosure of mortgage, confirmed and made absolute by the Civil Courts, of permanent tenures and holdings at fixed rates and fixed rents, and of shares in such tenures and holdings, shall not be deemed to be invalid merely on the ground that the landlord's prescribed fee has not been paid,

> And whereas it is also expedient to amend section 106 of the said Act in manner hereinafter appearing;

And whereas the said Act having been passed by the Governor General of India in Council, the sanction of the Governor General has been obtained, under section 5 of the Indian Councils. Act, 1892[8] to Vict., c. 14. the passing of this Act;

It is hereby enacted as follows:—

55 and 56

8 of 1885.

1. No transfer which has heretofore been made or which may Validation hereafter be made under section 12, section 13, section 17 or section 18 of transfers of the Bengal Tenancy Act, 1885[2] of a permanent tenure, or of a hold- and holdings ing at a rent or rate of rent fixed in perpetuity or of a share in such and shares in the same.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1902, Pt. IV, p. 21; for Report of Select Committee, see ibid, Pt. IV, p. 36; and for Proceedings in Council, see ibid, Pt. IVA, pp. 85, 89, and ibid, 1903, Pt. IVA,

The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

^[2] Printed in Vol. I of this Code.

^[3] See now s. 80A of the Government of India Act.

(Secs. 2-5.)

tenure or holding, shall be deemed to be invalid merely on the ground that the landlord's fee prescribed by the said section 12 or 13 has not been paid:

Provided always that, subject to the Explanation following, nothing in this section shall be held to affect the decision of a Court of competent jurisdiction which has become final before the commencement [1] of this Act.

Explanation.—A decree in a suit for rent which has become final disallowing a claim for rent on the ground that the relationship of landlord and tenant does not exist between the parties to the suit by reason of the non-payment of the landlord's fee, shall not bar a suit for rent which became payable subsequently to such claim.

Realization of fee when left unpaid.

- 2. In any case where the prescribed fee has been or may hereafter be left unpaid, the landlord may, within two years of the commencement of this Act,
- or within two years of the date of registration of the document effecting the transfer,

or within two years of the date of confirmation of the sale by the Civil Court,

or within two years of the date upon which a decree or order absolute for the foreclosure of a mortgage has been or may hereafter be made by the Civil Court,

apply to the Collector for realization of such fee from the transferee, or from the auction-purchaser or from the person who has obtained an order absolute for foreclosure of mortgage in the Civil Court, and on such application being presented, the Collector shall realize such fee if still unpaid, together with costs of realization, from such person as if it were an arrear of revenue.

Saving of section 88.

Substitution of a new section for section 106.

- 3. Nothing in section 1 shall be deemed to affect the provisions of 8 of 1885. section 88 of the said Bengal Tenancy Act, 1885[2].
- 4. For section 106 of the said Act, the following shall be substituted, namely:—
 - 106. [Printed on p. 458 in Vol. I of this Code.]

Short title.

5. This Act may be called the Bengal Tenancy (Validation and Amendment) Act, 1903.

^[1] i.e., the 25th February, 1903. [2] Printed in Vol. I of this Code.

BENGAL ACT 1 OF 1904.

[THE BENGAL TRAMWAYS (AMENDMENT) ACT, 1904.]

CONTENTS.

SECTION.

- 1. Short title.
- 2. Amendment of Ben. Act 3 of 1883, section 41.

BENGAL ACT 1 OF 1904.

[THE BENGAL TRAMWAYS (AMENDMENT) ACT, 1904.][1]

(2nd March, 1904.)

An Act to amend the Bengal Tramways Act, 1883. [2].

Whereas it is expedient to amend the Bengal Tramways Act, Ben. Act 3 1883[2]; of 1883.

It is hereby enacted as follows:-

- 1. This Act may be called the Bengal Tramways (Amendment) Act, Short title, 1904.
- 2. After the word "shorter," in the proviso to section 41 of the Amendment Bengal Tramways Act, 1883,[2] the words "or longer" shall be of Ben. Act of 1883, inserted.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1903, Pt. IV, p. 63; and for Proceedings in Council, see ibid, Pt. IVA, pp. 221, 236; and ibid, 1904, Pt. IVA, pp. 2 and 16.

The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code.

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. 1 of this Code.

^[2] Printed ante, p. 489.

BENGAL ACT 2 OF 1904.

(THE BENGAL PUBLIC PARKS ACT, 1904.)

CONTENTS.

SECTION.

- 1. Short title and application.
- 2. Definitions.
- 3. Power to extend boundaries of park.
- 4. Power to make rules.
- 5. Exhibition of copies of notifications and rules in park.
- 6. Refusal of offender to give name and residence.
- 7. Superintendent and park-durwan deemed "public servants".
- 8. General powers, duties, etc., of park-durwan.
- 9. General powers, etc., of police constables.

SCHEDULE.

BENGAL ACT 2 OF 1904.

(THE BENGAL PUBLIC PARKS ACT, 1904.)[1]

(9th March, 1904.)

An Act for the regulation of the Public Parks in Bengal.

Whereas it is expedient to protect public parks and gardens in Bengal[2] from injury, and to secure the public from molestation and annoyance while resorting to such parks and gardens;

It is hereby enacted as follows:—

- 1. (1) This Act may be called the Bengal Public Parks Act, 1904. Short title
- (2) It applies to the public parks and gardens mentioned in the and applica-Schedule, and may be applied to any other public park or garden in Bengal [2] by order of the Local Government published in the Calcutta Gazette.
- 2. In this Act, unless there is anything repugnant in the subject Definitions. or context.-
 - (a) "park" means any public park or garden to which this Act applies by virtue of section 1, sub-section (2), or any order published thereunder:
 - superintendent" means the person in executive charge of a park; and for the purposes of section 6, sub-section (2), includes also-
 - (i) an assistant superintendent of a park, and
 - (ii) any member of the Managing Committee (if any) of a park; and
 - (c) "park-durwan" means any person appointed by superintendent, or by the authority to whom the superintendent is subordinate, to act as a durwan of the park.

Sambalpur.

^[1] Legislative Papers.—For Statement of Objects and Reasons, see Calcutta Gazette, 1903, Pt. IV, p. 62; for Report of Select Committee, see ibid, 1904, Pt. IV, p. 22; and for Proceedings in Council, see ibid, 1903, Pt. IVA, pp. 218, 224 and ibid, 1904, Part IVA, pp. 2 and 14.

Local Extent.—This Act applies to the public parks and gardens mentioned in the Schedule on p. 730, post, and may be applied to others by order—see s. 1 (2).

The application of the Act is barred in—
the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in. Vol. I of this Code; and the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

(Secs. 3-4.)

Power to extend boundaries of park.

3. The Local Government may, by notification in the Calcutta Gazette, declare that any specified land, bridge or pontoon shall, for the purposes of this Act, be deemed to be included in any park.

Power to make rules.

- 4. (1) The Local Government may make rules for the management and preservation of any park, and for regulating the use thereof by the public.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may—
 - (a) regulate the admission of persons, horses and ponies, and carriages, palanquins and other conveyances, into the park, and prescribe fees to be paid therefor;
 - (b) prohibit or regulate the bringing of dogs, motor cars, bicycles or tricycles into the park;
 - (c) prohibit the doing of all or any of the following things by persons other than employes of the park, that is to say, plucking or gathering anything growing in the park breaking trees, branches or plants, cutting names or marks on trees, disfiguring buildings, furniture or monuments, removing or disfiguring labels or marks attached to trees or plants;
 - (d) prohibit the purchase of any produce of the park otherwise than from the superintendent or some other authorized person;
 - (e) prohibit shooting, bird-nesting, the catching of butterflies, or any act of cruelty;
 - (f) prohibit or regulate fishing or boating, and prescribe fees to be paid by persons obtaining permission to fish or to use boats;
 - (g) prohibit bathing or the pollution of water by any other means;
 - (h) prohibit the grazing of horses or ponies;
 - (j) prohibit the teasing or annoying of animals or birds kept in the park;
 - (k) prohibit the commission of any nuisance, or the molestation or annoyance of any person resorting to the park.
- (3) In making any rule under this section, the Local Government may direct that a breach thereof shall be punishable with fine which may extend to one hundred rupees.
- (4) The power to make rules under this section is subject to the condition that they shall be made after previous publication.[1]

^[1] As to previous publication, see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 26, in Vol. III of this Code.

(Secs. 5-8.)

- (5) All rules made under this section shall be published in the Calcutta Gazette.
- 5. One or more copies, in English and in one or more vernacular Exhibition languages, of every notification published under section 3, and of all of copies of notifications rules made under section 4 for observance by persons resorting to a and rules in park, and for the time being in force, shall be put up in the park in park. such conspicuous manner as the superintendent may deem best calculated to give information to such persons.
- 6. (1) If any person who, in the presence of a park-durwan in Refusal of uniform, has committed or has been accused of committing a breach of give name any rule made under section 4, and who is unknown to such durwan, and refuses, on demand of such durwan, to give his name and residence, or gives a name or residence which such durwan has reason to believe to be false, such person may be detained by such durwan in order that his name or residence may be ascertained.

- (2) When any person is detained under sub-section (1) he shall forthwith be taken to the superintendent, or, if the superintendent be not present in the park or its immediate precincts, such person shall be taken to the nearest police-station, or if he so requests, to the nearest Magistrate having jurisdiction to try him.
- (3) If the true name and residence of any person so taken to the superintendent be not ascertained within a reasonable time, the superintendent shall forthwith send for an officer of police, and shall detain the offender until the arrival of such an officer, and shall then deliver him into the custody of such officer to be taken to the nearest police-station.
- (4) If the true name and residence of any person taken to a policestation under this section be not ascertained within a reasonable time. he shall forthwith be forwarded to the nearest Magistrate having jurisdiction to try him.
- (5) When the true name and residence of any person detained under this section have been ascertained, he shall be allowed to depart.
- (6) No person shall be detained under this section for a longer period than twelve hours.

7. Every superintendent and park-durwan shall, for the purposes of Superinten-45 of 1860. the Indian Penal Code, be deemed to be a public servant.

> 8. Every park-durwan shall, in addition to any powers and General immunities specially conferred on him by this Act or by rules made duties, etc., hereunder, have, within the limits of the park to which he is appointed, of parkall such powers, privileges and immunities, and shall, within the said limits, be liable to all such duties and responsibilities, as a police-constable

dent and park-durwan deemed public ser-

(Sec. 9 and Schedule.)

has and is liable to within the limits of the police-station in which such park is comprised:

Provided that every park-durwan shall be subordinate to the superintendent.

General powers, etc., of policeconstables.

9. Every police-constable employed within the limits of a police-station shall have, within any park comprised in such limits, the powers, privileges and immunities conferred on a park-durwan by this Act and any rules made hereunder.

THE SCHEDULE.

PUBLIC PARKS AND GARDENS TO WHICH THIS ACT APPLIES IN THE FIRST INSTANCE.

[See section 1, sub-section (2).]

The Royal Botanic Garden, Sibpur.

The Zoological Garden, Alipur.

The Eden Gardens, Calcutta.

The Lloyd Botanical Garden, Darjeeling.

The Victoria Pleasance, Darjeeling.

BENGAL ACT 3 OF 1904.

(THE BENGAL SETTLED ESTATES ACT. 1904.)

CONTENTS.

PART I.

PRELIMINARY.

SECTION.

- Short title and extent.
 Definitions.

PART II.

APPLICATION FOR PERMISSION TO MAKE A FIRST SETTLEMENT OF AN ESTATE.

3. Who may apply for permission to settle an estate. 4. Signature, verification and contents of application.

5. Declarations and draft to accompany application in the case of an estate belonging to a joint Hindu family or to co-sharers.

6. Power to reject application.
 7. Transmission and notification of application.
 8. Rejection or approval of application after notification.
 9. Rejection no bar to making fresh application.

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

- 10. Settlement of estates for three generations.
- 11. Further remainders.
- 12. Further provisions in settlements.

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS.

13. Supplementary settlement in respect of property.

14. Power to apply for permission to make a supplementary settlement in respect of persons.

15. Power to apply for permission to make a fresh settlement.

16. Procedure in dealing with applications under section 14 or 15. 17. Provisions as to fresh settlements.

PART V.

SETTLEMENTS GENERALLY.

- 18. Approval, stamping and registration of settlements.
- 19. Approval, stamping and registration of instruments of surrender.

SECTION.

- 20. Bar to application of succession laws, in respect of property comprised in settle-
- 21. Power of Local Government to grant certificate after death of tenant for life.
- 22. Notification of instruments of settlement and instruments of surrender or revocation of settlement.
- 23. Abrogation of inconsistent laws.

PART VI.

REVOCATION, CANCELLATION AND AMENDMENT OF SETTLEMENTS.

- 24. Revocation of settlement by tenant for life.
- 25. Cancellation or amendment of settlement by Local Government.
- 26. Revival of incumbrances on revocation, cancellation or amendment of settlement.

PART VII.

RIGHTS AND POWERS OF TENANT FOR LIFE AND PROTECTION OF SETTLED ESTATE DURING HIS LIFE.

- 27. Right of tenant for life to profits of settled estate.
- 28. Restriction on alienation by tenant for life.
- 29. Sales by tenant for life.

- 30. Leases by tenant for life.
 31. Saving of leases of raiyati holdings.
 32. Bar to sale of settled estate in execution of decree.
- 33. Sale of settled estate for arrears of land-revenue, etc.
- 34. Procedure for recovery of such arrears.

PART VIII.

MISCELLANEOUS.

- 35. Form, publication and duration of permissions granted by Local Government.
- 36. Notifications how to be published.
- 37. Power to make rules.
- 38. Application of Court of Wards Act, 1879.
- 39. Saving of rights of secured creditors.

BENGAL ACT 3 OF 1904.

(THE BENGAL SETTLED ESTATES ACT, 1904.)[1]

(9th March, 1904.)

An Act to facilitate family settlement of estates in Bengal. [2]

Whereas it is expedient to facilitate the making of family settlements of estates by landholders in Bengal; [2]

And whereas, the Bengal Land-revenue Sales Act, 1859,[3] the 11 of 1859. Indian Succession Act, 1865[4], the Court-fees Act, 1870,[5] the Indian 10 of 1865. 7 of 1870. Limitation Act, 1877, [6] the Probate and Administration Act, 1881, [7] 15 of 1877. the Transfer of Property Act, 1882,[8] the Succession Certificate Act, 5 of 1881. 4 of 1882. 7 of 1889. 1889,[9] and the Indian Stamp Act, 1899,[10] having been passed by the Governor General of India in Council, the previous sanction of the 2 of 1899. Governor General has been obtained, under section 5^[11] of the Indian 55 and 56 Vict., c. 14. Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:-

PART I.

PRELIMINARY.

1. (1) This Act may be called the Bengal Settled Estates Act, 1904; Short title and

and extent.

(2) It extends to the whole of Bengal. [2]

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1903, Pt. IV, p. 57; for Report of Select Committee, see ibid, 1904, Pt. IV, p. 1; and for Proceedings in Council, see ibid, 1903, Pt. IVA, pp. 192, 207, and ibid, 1904, Pt. IVA, pp. 2 and 16.

LOCAL EXTENT.—This Act extends to the whole of the former Province of Bengalsee s. 1 (2). It is in force in the Sonthal Parganas—see Vol. IV, Pt. IV; but its
application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. 1 of this Code.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[3] Printed in Vol. I of this Code.

14] Act 10 of 1865 has been repealed and re-enacted by the Indian Succession Act, 1925 (59 of 1925), in General Acts, 1924-27, Ed. 1928, p. 219.

[5] Printed in General Acts, 1834-72, Ed. 1928, p. 282.

[6] Act 15 of 1877 has been repealed and re-enacted by the Indian Limitation Act, 1800 (1928) and 1900 (1928) and 1928 (1928) and 1

- 1908 (9 of 1908), in General Acts, 1898-1909, Ed. 1928, p. 332. 1900 [9 01 1900], in General Acts, 1696-1909, Ed. 1926, p. 502.
 [7] Act 5 of 1881 has been repealed and re-enacted by the Indian Succession Act,
 1925 (39 of 1925), in General Acts, 1924-27, Ed. 1928, p. 219.
 [8] Printed in General Acts, 1873-86, Ed. 1928, p. 525.
 [9] Printed in General Acts, 1887-97, Ed. 1928, p. 73.
 [10] Printed in General Acts, 1893-1909, Ed. 1928, p. 56.
 [11] See now sec. 80A(3) of the Government of India Act.

(Sec. 2.)

- **2.** (1) In this Act, unless there is anything repugnant in the subject or context,—
 - (a) "estate" includes—
 - (i) immovable property,
 - (ii) money, and securities for money, and
 - (iii) any jewellery or other movable property which should, in the opinion of the Local Government, be treated as heirlooms;
 - (b) "settled estate" means an estate in respect of which a settlement made under this Act is for the time being in force:
 - (c) "settlor" means the person who makes a settlement under this Act:
 - (d) "first tenant for life" means the settlor;
 - (e) "second tenant for life" means the person appointed by a settlement made under this Act to take a settled estate on the death of the first tenant for life, or who, on the surrender by the first tenant for life, takes his interest under the settlement;
 - (f) "third tenant for life" means the person appointed by a settlement made under this Act to take a settled estate on the death of the second tenant for life, or who, on the surrender by the second tenant for life, takes his interest under the settlement;
 - (g) "tenant for life" means a first, second or third tenant for life;
 - (h) "son" includes a son born after the execution of a settlement, and, in the case of anyone whose personal law permits adoption, includes also a son—
 - (i) duly adopted, either before or after the execution of a settlement, by the adoptive father himself, or
 - (ii) duly adopted to her deceased husband, within five years after his death, by a widow, acting under authority, in writing and registered, lawfully conferred on her by him in that behalf;
 - (j) "secured debt" means a debt, demand or claim which is secured by way of a mortgage, charge or lien on specified property and is primarily enforceable against such property;
 - (k) "unsecured debt" means a debt, demand or claim (other than a secured debt) for any sum exceeding five hundred rupees, which is enforceable against the person or general property of the debtor;

(Sec. 3.)

- (l) "secured creditor" means a person who is entitled to enforce payment of a secured debt;
- (m) "unsecured creditor" means a person who is entitled to enforce payment of an unsecured debt;
- (n) "incumbrance" means a secured debt, or an unsecured debt, or both:
- (0) the expression "the Collector," when used with reference to any estate, means the Collector of the district in which the estate or any part thereof is situated; and
- (p) the expression "the Civil Court," when used with reference to any estate, means the principal Civil Court having original jurisdiction in the area in which the estate or any part thereof is situated.
- (2) A person shall be deemed, for the purposes of this Act, to be "competent to contract" if he is of the age of majority according to the law to which he is subject, and is of sound mind, and is not disqualified from contracting by any law to which he is subject.
- (3) All words and expressions used in this Act, which are defined 4 of 1882. in the Transfer of Property Act, 1882[1] shall have the same meaning as in that Act.

PART II.

Application for Permission to make a First Settlement of an Estate.

3. (1) Any landholder may apply to the Local Government for Who may apply for permission to make a settlement of an estate under this Act,—

who may apply for permission to settle an

- (a) if he is competent to contract,
- (b) if he is in possession of the estate, either in his own right or along with or on behalf of others, and
- (c) if the estate is held in permanent, heritable and transferable right:
- (2) Provided that no application may be made under sub-section (1) in respect of any estate—
 - (i) unless the applicant is solely entitled to the estate, or
 - (ii) if the estate belongs to a joint Hindu family—unless the applicant is the karta or managing member of the family, or
 - (iii) if the estate belongs to co-sharers—unless the applicant is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, the sole right of management over the estate.

(Secs. 4-5.)

Signature, of application.

- 4. (1) Every such application must be in writing, and must be and contents signed by the applicant and verified by him in the manner prescribed in section 52[1] of the Code of Civil Procedure for the verification of plaints. 14 of 1882.
 - (2) Every such application must contain the following particulars, namely:--
 - (a) a description of the estate, sufficient for its identification;
 - (b) a statement of the income yielded annually by the property comprised in the estate, and the revenue, rates and taxes due to the Government or any Local Authority annually in respect of such property; and
 - (c) a list giving a full and complete enumeration and description of all incumbrances held by secured and unsecured creditors, respectively, and enforceable against the applicant or the estate; with the name and address of each such creditor, and a correct statement of the amount due to each such creditor.

Declarations accompany application in the case

of an estate

belonging to a joint

co-sharers.

Hindu family or to

- 5. (1) If any estate in respect of which an application is made under and draft to section 3 belongs to-
 - (a) a joint Hindu family, or

(b) co-sharers,

the application must be accompanied by-

(i) a sworn declaration by the applicant,—

in case (a), that he is the karta or managing member of the family, or

- in case (b), that he is a principal shareholder in the estate and has, by custom or with the consent of his co-sharers, as the case may be, the sole right of management over the estate; and
- (ii) a sworn declaration, in case (a), by the other co-owners, or in case (b) by the other co-sharers, that they are willing to assent to the estate being settled under this Act; and
- (iii) a draft of the proposed instrument of settlement.
- (2) If any of the said other co-owners or co-sharers is, at the time when the application is made, a minor, a declaration under clause (ii) of sub-section (1) may be accepted if it is

made on behalf of such minor by the guardian of his property or (when a guardian of his property cannot lawfully be appointed) the guardian of his person, appointed or declared under the Guardians and Wards Act, 1890, [2] or any other law for the time being in force, and

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rule 15 (2) and (3) in Order VI in Schedule I to that Code—see s. 158 thereof. [2] Printed in General Acts, 1887-97, Ed. 1928, p. 85.

(Secs. 6-7.)

approved by an order in writing under the seal of the Court which appointed or declared the guardian.

(3) If any of the aforesaid other co-owners or co-sharers is, at the time when the application is made, a lunatic, a declaration may be accepted under clause (ii) of sub-section (1) if it is

54 of 1858. 35 of 1858.

made on behalf of such lunatic by his committee appointed under the Lunacy (Supreme Courts) Act, 1858,[1] or the Lunacy (District Courts) Act, 1858,[1] or any other law for the time being in force, and

approved by an order in writing under the seal of the Court which appointed the committee.

6. The Local Government may, in its discretion, and after such Power to inquiry (if any) as it may think fit to make, by written order reject any cation. application made under section 3.

7. If any application made under section 3 is not rejected under Transmission section 6, and if the Local Government is satisfied that the conditions tion of applispecified in section 3 are fulfilled, and that the provisions of sections 4 cation. and 5 have been duly complied with,

the Local Government shall send a copy of the application, and of the declarations which accompanied it, as also a copy of the draft of the proposed instrument of settlement, to each creditor who is named in the application, and to each person who has made a declaration in pursuance of clause (ii) of section 5;

and, [2]* shall publish a notification-

(a) setting forth the application [except the particulars inserted therein in pursuance of clause (b) of section 4] and the declarations which accompanied it;

- (b) calling upon all creditors, whether secured or unsecured, holding or entitled to incumbrances enforceable against the applicant or the estate to which the application relates, and all other persons interested or claiming to be interested in the estate, to send to the Local Government written notice of their incumbrances and interests, respectively, within a period of six months from the date of the notification, and
- (c) intimating that any objections to the proposed settlement, whether urged by creditors or by other persons interested

[2] The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Pt. V, in Vol.

I of this Code.

^[1] Acts 34 and 35 of 1858 have been repealed and re-enacted by the Indian Lunacy Act, 1912 (4 of 1912), printed in General Acts, 1910-1913, Ed. 1928, p. 239, and these references should now be construed as references to the latter Act—see the General Clauses Act, 1897 (10 of 1897), s. 8, in the General Acts, 1887-97, Ed. 1928,

(Secs. 8-9.)

in the estate, which may be communicated to the Local Government in writing within the said period, will be duly considered.

Rejection or approval of application after notification.

- 8. (1) At any time after the expiration of the said period, and after considering any notices and objections received under section 7, and after such inquiry (if any) as it may think fit to make, the Local Government may, in its discretion, by written order either—
 - (a) reject such application, or
 - (b) grant permission to make the proposed settlement in respect either of the whole of the property to which the application relates or of any part thereof:

Provided that, if any incumbrances have been set forth in the application or brought to the notice of the Local Government, such permission shall not be granted unless—

- (i) the incumbrances are first discharged, or
- (ii) a condition is made for the insertion in the settlement of provisions, to be assented to by the creditors and approved by the Local Government, for the discharge of the incumbrances, or for their continuance, with or without modification, and for the payment of interest thereon.
- (2) If the right of the applicant to make the settlement is disputed by or on behalf of any person interested or claiming to be interested in the estate, the Local Government may, if it think fit, refer the matter in dispute to the Civil Court for decision, before determining whether to reject the application or to grant permission to make the proposed settlement; and the Civil Court shall, in dealing with any such reference follow the procedure prescribed in the Code of Civil Procedure [1] for the trial 14 of 1882, of suits, so far as the same may be applicable.
- (3) Every decision by the Civil Court under sub-section (2) shall be deemed to be a decree within the meaning of the Code of Civil 14 of 1882. Procedure; [1] and an appeal therefrom shall lie to the High Court.

Rejection no bar to making fresh application.

9. The rejection under section 6 or section 8 of an application for permission to make a settlement of an estate under the foregoing provisions of this Act shall be no bar to the making of a fresh application in respect of the same estate, if the applicant shows sufficient reason for so doing.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to that Code—see s. 158 thereof.

(Sec. 10.)

PART III.

PROVISIONS TO BE CONTAINED IN FIRST SETTLEMENTS.

- **10.** (1) Every settlement made under the foregoing provisions of Settlement this Act in respect of any estate shall provide that the estate shall be of estates for three generations.
 - (a) by the settlor, as first tenant for life;
 - (b) and thereafter, by the second tenant for life, who shall be the eldest or only son of the first tenant for life;
 - (c) and thereafter, by the third tenant for life, who shall be the eldest or only son of the second tenant for life.
 - (2) Every such settlement shall further provide,—
 - (i) if the estate is one to which the settlor was, immediately before the execution of the settlement, solely entitled—that, after the life of the third tenant for life, the eldest or only son of such tenant shall hold the estate absolutely;
 - (ii) if the estate belonged, immediately before the execution of the settlement, to a joint Hindu family—that, after the life of the third tenant for life, the eldest or only son of such tenant shall during his life be the karta or manager of the estate, but without prejudice to the rights of any persons who, but for the settlement, would be co-owners of the estate; and
 - (iii) if the estate belonged, immediately before the execution of the settlement, to co-sharers—that, after the life of the third tenant for life, the eldest or only son of such tenant shall have during his life the sole right of management over the estate;

but subject in each case to the terms of any fresh settlement made by a tenant for life in pursuance of permission granted under section 16.

- (3) If the eldest or only son of the settlor has predeceased the settlor, or if the settlor desires to exclude such son from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government, then, notwithstanding anything contained in the foregoing sub-sections, the Local Government may permit him to provide in the settlement—
 - (i) that the second tenant for life shall be another son of the settlor, if he has another son, or the eldest or only son of the son who has predeceased the settlor or has been excluded as aforesaid, and
 - (ii) that the third tenant for life shall be the eldest or only son of the second tenant for life, or the eldest or only son of the

(Secs. 11-12.)

son who has predeceased the settlor or has been excluded as aforesaid.

(4) Any settlement made under the foregoing provisions of this Act may provide that any tenant for life may, with the previous sanction of the Local Government, by written instrument surrender his interest under the settlement in favour of the next tenant for life.

Further remainders. 11. Every settlement made under the foregoing provisions of this Act may also contain provisions for vesting the estate, in the event of the settlement on the second tenant for life or the third tenant for life or his son failing to take effect, in some other person descended from the settlor or the settlor's father in the direct male line.

Further provisions in settlements.

- 12. (1) Every settlement made under the foregoing provisions of this Act shall specify all incumbrances referred to in clause (ii) of section 8.
- (2) Every such settlement shall also contain such provisions as may be approved by the Local Government with regard to the following matters, namely:—-
 - (a) the discharge of incumbrances on the estate, and the payment of interest thereon; or their continuance (with or without modification), and the payment of interest thereon;
 - (b) the maintenance of the co-owners and co-sharers (if any) by or on whose behalf a declaration has been made under clause (ii) of section 5, and of all persons who at the time of the execution of the settlement are, or thereafter may be, legally entitled to maintenance out of the estate;
 - (c) the management of the estate after the death of the settlor-
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the second tenant for life;
 - (d) the management of the estate after the death of the second tenant for life—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the third tenant for life;
 - (e) the management of the estate after the death of the third tenant, for life—
 - (i) during a period not exceeding five years after such death, pending the adoption of a son under the circumstances described in sub-clause (ii) of clause (h) of section 2, or
 - (ii) during the minority of the next holder.

(Sec. 13.)

(3) If any settlement made under the foregoing provisions of this Act includes money, securities for money, or movable property, the settlement shall contain such provisions as may be approved by the Local Government for vesting such money, securities or property in a trustee, for the investment or conversion of such money or securities in or into securities authorized by section 20 of the Indian Trusts Act, 1882,[1] and the payment to the trustee of expenses and remuneration in accordance with rules made under section 37, clause (c).

Explanation.—The Official Trustee of Bengal, [2] the Collector or any private person may be appointed to be a trustee for the purposes of this sub-section.

(4) In addition to the various matters hereinbefore specified, the Local Government may require or permit the insertion in any settlement made under the foregoing provisions of this Act of any provisions which it may think fit, and may make its approval of the settlement conditional on the insertion of provisions which it has required to be inserted:

Provided that no provisions inserted in pursuance of this sub-section shall operate to the prejudice of any secured or unsecured creditor unless assented to by him.

PART IV.

SUPPLEMENTARY SETTLEMENTS AND FRESH SETTLEMENTS.

13. (1) At any time after a settlement has been made under the Supplement. foregoing provisions of this Act, a tenant for life may apply to the Local ary settlement in Government for permission to make a supplementary settlement for the respect of purpose of adding further property to the settled estate-

- (a) if he is competent to contract,
- (b) if he is in possession of such property, either in his own right or along with or on behalf of others, and
- (c) if such property is held in permanent, heritable and transferable right:
- (2) Provided that no application may be made under sub-section (1) in respect of any property—
 - (i) unless the applicant is solely entitled to the property, or
 - (ii) if the property belongs to a joint Hindu family-unless the applicant is the karta or managing member of the family, or
 - (iii) if the property belongs to co-sharers—unless the applicant is a principal shareholder in the property and has, by custom or with the consent of his co-sharers, the sole right of management over the property.

2 of 1882.

^[1] Printed in General Acts, 1873-86, Ed. 1928, p. 393.
[2] As to the Official Trustee, see the Official Trustees Act, 1913 (2 of 1913), ia General Acts, 1910-1913, Ed. 1928, p. 337.

(Secs. 14-16.)

(3) The provisions of sections 4 to 9 shall apply to every application made under sub-section (1) in respect of any property, and the provisions of section 10 or 12 shall apply to every settlement of such property, as if the property were an "estate" within the meaning of those sections.

Power to apply for permission to make a supplementary settlement in respect of persons.

14. If, at any time after any settlement has been made under the foregoing provisions of this Act, the second tenant for life dies during the life of the settlor, or the settlor desires to exclude him from holding the estate on the ground of incapacity or defect of character which is proved by the settlor to the satisfaction of the Local Government,

the settlor may, if he is competent to contract, apply to the Local Government for permission to make a supplementary settlement for the purpose of appointing to be second tenant for life and third tenant for life, respectively, any other persons who might have been so appointed in pursuance of clauses (i) and (ii) of sub-section (3) of section 10.

Power to apply for permission to make a fresh settlement.

fresh settlement.

Procedure in dealing with applications under sec-

tion 14 or 15.

- 15. At any time after any settlement has been made under the foregoing provisions of this Act, a tenant for life of a settled estate may, if he is competent to contract, apply to the Local Government for permission to make a fresh settlement of the estate.
- 16. (1) The provisions of section 4, sub-section (1), and section 9 shall apply to every application for permission to make a supplementary settlement in respect of persons or a fresh-settlement.
- (2) If any such application relates to an estate to which the settlor was, immediately before the execution of the former settlements, respectively, solely entitled, the Local Government may, in its discretion, and after such inquiry (if any) as it may think fit to make, by written order, either—
 - (i) reject the application, or
 - (ii) grant permission to make the proposed settlement.
- (3) If any such application relates to an estate which belonged, immediately before the execution of the former settlements, respectively, to a joint Hindu family or to co-sharers, the application must be accompanied by a declaration by all persons (other than the applicant) who, but for such settlements, would be co-owners or co-sharers in the estate, to the effect that they are willing to assent to the proposed settlement.
- (4) If any of such co-owners or co-sharers is, at the time when the application is made, a minor or a lunatic, a declaration under sub-section (3) of this section may be accepted if it is made and approved as indicated in sub-section (2) or sub-section (3), as the case may be, of section 5.
- (5) In every case referred to in sub-section (3) of this section, the Local Government

(Sec. 17.)

shall send a copy of the application, and of the declarations which accompanied it, to each person who has made a declaration in pursuance of that sub-section;

and,[1]* *

shall publish a notification-

- (a) setting forth the application and the declarations which accompanied it;
- (b) calling upon all persons (other than creditors) interested or claiming to be interested in the estate, to send to the Local Government written notice of their interests within a period of six months from the date of the notification, and
- (c) intimating that any objections by such persons to the proposed settlement, which may be communicated to the Local Government in writing within the said period, will be duly considered;

and, at any time after the expiration of the said period, and after considering any notices and objections received under this sub-section, and after such inquiry (if any) as it may think fit to make, may, in its discretion, by written order, either—

- (i) reject the said application, or
- (ii) grant permission to make the proposed settlement.
- 17. (1) The provisions of sections 10, 11 and 12 shall apply to Provisions every fresh settlement made in pursuance of permission granted under as to fresh section 16.
- (2) All property which, immediately before the execution of a fresh settlement in respect of any estate, is included in any former settlement of the estate made under this Act, must be included in such fresh settlement.
- (3) No property shall be included in any fresh settlement made under this Act in respect of any estate unless it is, immediately before the execution of such settlement, included in a former settlement of the estate made under this Act.
- (4) If any incumbrance, which is dealt with in any former settlement made under this Act in respect of any estate, is still in existence at the time of the execution of the fresh settlement of the estate, then nothing contained in such fresh settlement shall affect the rights of the creditor unless assented to by him.
- (5) Every fresh settlement made under this Act in respect of any estate shall, subject to the foregoing provisions of this section, supersede all former settlements made under this Act in respect of such estate.

^[1] The words "with the previous sanction of the Governor General in Council" were omitted by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Part V, in Vol. I of this Code.

(Secs. 18-19.)

PART V.

SETTLEMENTS GENERALLY.

Approval, stamping and registration of settlements.

Approval,

stamping

tion of ins-

truments of surrender.

- 18. (1) No settlement made under this Act shall take effect unless the instrument of settlement-
 - (a) is of a non-testamentary character,
 - (b) is attested by two or more witnesses,
 - (c) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries of the Local Government,
 - (d) bears a stamp of the full value prescribed by sub-section (2), or, if the sanction of the Board of Revenue[1] has been given under sub-section (3), of one-third of such value, and
 - (e) is registered within three months after the said approval has been certified as aforesaid.
- (2) Every instrument of settlement made under this Act, not being a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15, shall, notwithstanding anything contained in the Indian Stamp Act, 1899, [2] bear a stamp of a value equivalent 2 of 1899. to one-fourth of the annual net profits of the estate comprised in the settlement:
- (3) Provided that a stamp of one-third of such value may be affixed, with the previous sanction of the Board of Revenue, [1] on arrangements being made to its satisfaction for the affixing of stamps for the rest of such value at subsequent dates within three years from the date of the instrument.
- (4) If any question arises, with reference to sub-section (2) or subsection (3), as to the amount of the annual net profits of any estate, the Cocision of the Board of Revenue [1] thereon shall be final.
- (5) Every instrument making a supplementary settlement referred to in section 14 or a fresh settlement referred to in section 15 shall, notwithstanding anything contained in the Indian Stamp Act, 1899, 2 of 1899. [2] bear a stamp of ten rupees.
- (6) Subject to the foregoing provisions of this section, every instrument of settlement shall take effect from the date of its execution.
- **19.** (1) No instrument of surrender referred to in sub-section (4) of and registra- section 10 shall take effect unless it-
 - (a) is of a non-testamentary character;

^[1] As to the present constitution and powers of the Board of Revenue, see the Bihar and Orissa Board of Revenue Act, 1913 (B. and O. Act 1 of 1913), printed in Vol. III of this Code.

^[2] Printed in General Acts, 1893-1909, Ed. 1928, p. 56.

(Secs. 20-22.)

- (b) is attested by two or more witnesses;
- (c) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government;
- (d) is stamped in accordance with the provisions of the Indian Stamp Act, 1899,[1] and
- (e) is registered within three months after the said approval has been certified as aforesaid.
- (2) Subject to the foregoing provisions of this section, every such instrument shall take effect from the date of its execution.
- 10 of 1865. 5 of 1881. 7 of 1889.

2 of 1899.

20. (1) Notwithstanding anything contained in the Indian Suc- Bar to applicession Act, 1865,[2] the Probate and Administration Act, 1881,[3] or succession the Succession Certificate Act, 1889,[4] it shall not be necessary for laws in any person to obtain probate or letters of administration, or a certificate property under the last-mentioned Act, to admit of his taking any property or comprised in recovering any debt or realizing any security in virtue of a settlement settlement. made under this Act.

7 of 1889.

(2) If any probate, any letters of administration or any certificate granted under the Succession Certificate Act, 1889, [4] purports to cover any property, debt or security which is comprised in a settlement made under this Act, then, notwithstanding anything contained in Article 11 or Article 12 of Schedule I to the Court-fees Act, 1870,[5] no court-fee shall be levied under either of those Articles in respect of such property, debt or security.

7 of 1870.

21. At any time after the death of any tenant for life of a settled Power of estate, any of the Secretaries to the Local Government may, upon the Government application of any person claiming a right to hold the settled estate to grant under the instrument of settlement, grant a certificate to such person after death declaring him to be entitled to hold such estate under such instrument; of tenant and such certificate shall be presumed to be correct unless and until the for life. contrary is proved.

22. (1) When any instrument of settlement or surrender of settle- Notification ment or revocation of settlement is registered, the registering-officer of instrushall report the fact to the Local Government; and, on receipt of such settlement report, the Local Government shall publish a notification stating and instru-

- surrender or revocation of settlement.

^[1] Printed in General Acts, 1898-1909, Ed. 1928, p. 56.

^[2] Act 10 of 1865 has been repealed and re-enacted by the Indian Succession Act, 1925 (39 of 1925), in General Acts, 1924-27, Ed. 1928, p. 219.

^[8] Act 5 of 1881 has been repealed and re-enacted by ibid.

^[4] Printed in General Acts, 1887-97, Ed. 1928, p. 73.

^[5] Printed in General Acts, 1834-72, Ed. 1928, p. 282.

2 of 1899.

(Secs 23-24.)

the purport of the instrument and the office in which it has been registered.

(2) The Collector shall cause a copy of every such notification to be posted in his office, and to be published on the settled estate at such places and in such manner as may in his opinion be sufficient for giving information to tenants and other persons interested.

Abrogation of incon-

- 23. No settlement or part of a settlement made under this Act sistent laws, shall be liable to be avoided or set aside by any Civil Court by reason only that it contravenes—
 - (a) any provision of the Transfer of Property Act, 1882,[1] or 4 of 1882.
 - (b) any law or rule for the time being in force for the prevention of perpetuities, or
 - (c) any family custom or any personal law of succession to which the family is subject,

which is inconsistent with the provisions of this Act.

PART VI.

REVOCATION, CANCELLATION AND AMENDMENT OF SETTLEMENTS.

Revocation for life.

- 24. (1) A tenant for life of a settled estate may, at any time, if he of settlement is competent to contract, apply to the Local Government for permission to revoke, either wholly or as respects any particular property, any settlement made under this Act.
 - (2) The Local Government, after considering the application, and the result of any inquiry made by it or under its orders, and any further particulars or information called for by it, may, in its discretion, by written order, either—
 - (a) reject the application, or
 - (b) grant the permission applied for, or
 - (c) grant permission to revoke the settlement as respects such property only as may be specified in the order.
 - (3) When permission is granted under sub-section (2) to revoke a settlement, either wholly or as respects any particular property, the revocation shall not take effect unless the instrument of revocation—
 - (i) is of a non-testamentary character,
 - (ii) is attested by two or more witnesses,
 - (iii) has been approved by the Local Government before execution, and the fact of such approval having been given is certified on the instrument by one of the Secretaries to the Local Government,
 - (iv) is stamped in accordance with the provisions of the Indian Stamp Act, 1899, [2] and

Printed in General Acts, 1873-86, Ed. 1928, p. 325.
 Printed in General Acts, 1898-1999, Ed. 1928, p. 56.

(Secs. 25-28.)

- (v) is registered within three months after the said approval has been certified as aforesaid.
- (4) Subject to the foregoing provision of this section, every such instrument shall take effect from the date of its execution.
- 25. (1) Notwithstanding anything hereinbefore contained, the Cancellation Local Government may at any time declare by notification that any or amendsettlement made under this Act in respect of a settled estate shall be settlement deemed— Government.
 - (a) to be cancelled, or
 - (b) to be amended so as to exclude any part of the estate described in the notification.
- (2) On the publication of such notification the said settlement shall be deemed to be cancelled or amended as aforesaid, as the case may be.
- 26. When any instrument of settlement is revoked under section 24, Revival of or cancelled or amended under section 25, the rights of all persons ces on revohaving incumbrances on the estate shall, notwithstanding anything con-cation, cantained in the Indian Limitation Act, 1877,[1] revive and be enforceable amendment as if the settlement had not been made, but subject to any payments of settlewhich were made while the settlement was in force.

PART VII.

RIGHTS AND POWERS OF TENANT FOR LIFE, AND PROTECTION OF SETTLED ESTATE DURING HIS LIFE.

27. All profits of a settled estate, which are realized by a tenant Right of for life, or which, immediately before his death, were due to him but life to profits were not realized by him, shall, subject to the other provisions of this of settled Act, belong absolutely to such tenant or his heirs, executors, administra-estate. tors or assigns:

Provided that, if any rents due to a tenant for life in respect of a settled estate were in arrear immediately before his death, the same shall, upon his death, notwithstanding anything contained in this Act, or in the Indian Succession Act, 1865, [2] or in any other law, or in any settlement made under this Act, and notwithstanding any will or other disposition made by such tenant, become due to the next holder of the estate.

28. Except as provided in sections 29 and 30, a tenant for life of a Restriction settled estate shall not be entitled to transfer by way of sale or gift, or on alienation by otherwise alienate, or to create any incumbrance upon, or to lease, the tenant for estate, or any part thereof, or to assign his right to receive any of the life. profits thereof.

[1] Act 15 of 1887 has been repealed and re-enacted by the Indian Limitation Act, 1908 (9 of 1908), printed in General Acts, 1898-1909, Ed. 1928, p. 332.

[2] Act 10 of 1865 has been repealed and re-enacted by the Indian Succession Act, 1925 (39 of 1925), in General Acts, 1924-27, Ed. 1928, p. 219,

10 of 1865.

15 of 1877.

2 of 1882

(Secs. 29-30.)

Sales by tenant for life.

- 29. (1) A tenant for life of a settled estate may, with the previous written sanction of the Civil Court, sell the estate or any part thereof.
- (2) If the estate belonged, immediately before the execution of the settlement, to a joint Hindu family or to co-sharers, the Court shall, before determining to accord such sanction, notify the proposed sale to all persons (except the tenant for life) who, but for the settlement, would be co-owners or co-sharers in the estate; and shall hear and duly consider any objection which may be advanced by them or on their behalf.
- (3) The proceeds of every such sale shall be paid by the purchaser to the Collector; and shall be held by the Collector in trust to re-invest the same, with the approval of the Local Government, in immovable property, which shall, upon such re-investment, be and remain subject to the settlement in like manner as if it had been originally comprised therein.

Leases by tenant for life.

- **30.** (1) A tenant for life of a settled estate may lease the estate or any part thereof from year to year or for any term not exceeding seven years, or (with the previous written consent of the Collector) for any longer term not exceeding fourteen years, or (with the previous sanction of the Local Government) for any longer term of years or in perpetuity.
- (2) No premium or fine shall be taken on any such lease granted for a term exceeding seven years, or in perpetuity, except with the previous written consent of the Collector.
- (3) When any premium or fine is taken on any lease granted under sub-section (1), then—
 - (a) if the lease is from year to year or for a term of years, a sum equivalent to four-fifths of the amount of the premium or fine, or
 - (b) if the lease is in perpetuity, the whole of the premium or fine shall be paid—
 - (i) to the trustee appointed for the purposes of section 12, sub-section (3), or
 - (ii) if no trustee has been so appointed, to a trustee to be appointed for the purpose;

and shall be held by such trustee as part of the settled estate, and shall be invested by him in securities authorized by section 20 of the Indian Trusts Act, 1882[1].

Provided that such trustee may retain, for the payment of his expenses and remuneration, such portion of the amount paid to him as may be authorized by rules made under section 37, clause (c).

(4) In respect of every such lease the best rent shall be reserved that can reasonably be obtained.

(Secs. 31-34.)

- (5) No payment of any instalment of such rent made to a tenant for life before it falls due shall operate to the prejudice of any subsequent holder of the estate.
- 31. Nothing in section 28 or sub-sections (1) and (2) of section 30 Savings of shall apply to leases of raiyati holdings.

32. (1) No settled estate or part thereof shall, during the life of a Bar to sale tenant for life, be sold in execution of a decree of a Civil Court. of settled estate in

(2) If any decree against a tenant for life of a settled estate is not execution satisfied, the Court may, on the application of the decree-holder, appoint of decree. a Receiver of such estate or any part thereof, under the provisions of Chapter XXXVI of the Code of Civil Procedure, [1] for the purpose of recovering the amount of the decree and, subject to the rights of any secured creditor over such estate or part, satisfying the claims of the decree-holder.

(3) An appeal shall lie to the High Court from any order made by a Court under sub-section (2).

33. (1) Notwithstanding anything contained in the Bengal Land-Sale of revenue Sales Act, 1859,[2] or any other law, no settled estate or part estate for of a settled estate shall, without the previous sanction of the Local arrears of Government, be sold, during the life of any tenant for life thereof, for land-revenue, an arrear of land-revenue or for any other arrear which is recoverable in the same manner as an arrear of land-revenue.

(2) If any settled estate or part of a settled estate be sold, with the sanction required by sub-section (1) of this section, to any person other than the tenant for life, the resulting surplus shall be dealt with in the manner described in sub-section (3) of section 29;

and, if the estate or any part thereof be purchased at the sale by the tenant for life, the resulting surplus shall be paid to the tenant for life, and the estate or part so purchased shall, notwithstanding the sale, continue to be subject to the settlement.

(3) If the person whose name is entered in any certificate granted under the said Bengal Land-revenue Sales Act, 1859,[2] or any other law, as purchaser of a settled estate or part thereof, is not the tenant for life, the said resulting surplus may be retained by such person, and shall not be payable to the tenant for life, even though it may be claimed that the purchase was made by such person on behalf of the tenant for life.

34. (1) If any such arrear accrues in respect of a settled estate, or Procedure any part thereof, during the life of any tenant for life thereof, and if the for recovery sale of the estate or part for the recovery of the arrear is not sanctioned arrears.

[2] Printed in Vol. I of this Code.

14 of 1882.

11 of 1859.

11 of 1859.

^[1] Act 14 of 1882 has been repealed and re-enacted by the Code of Civil Procedure, 1908 (5 of 1908), and this reference should now be taken to be made to rules 1 to 3 and 5 in Order XL in Schedule I to that Code—see s. 158 thereof.

(Sec. 35.)

by the Local Government under section 33, the Collector may attach the estate or part,

and shall thereupon be entitled, to the exclusion of all other persons, to receive all rents and other moneys (if any) due to such tenant in respect of such estate or part,

and may manage the estate or part, either directly or through a manager, for such period as may be necessary for the recovery of such arrear.

- (2) Upon the expiration of the period referred to in sub-section (1), the Collector shall deduct from the proceeds of the management the amount of the said arrear and any similar arrears that may have accrued during such period, and any interest thereon, and the expenses incurred in the management; and shall then—
 - (a) pay the balance of such proceeds to the person then entitled to hold the estate, and
 - (b) furnish such person with an account of the receipts and expenditure during the management, and
 - (c) release the estate or part to such person.
- (3) If, after a settled 'estate or part thereof held by a tenant for life has been managed and released by the Collector under sub-sections (1) and (2) any such arrear as aforesaid again accrues in respect of the estate or part during the life of the same tenant, and if the sale of the estate or part thereof for the recovery of the arrear is not sanctioned by the Local Government under section 33,

the Court of Wards may take charge of and deal with the estate or part under the provisions of the Court of Wards Act, 1879,[1] and may Ben. Act 9 retain such charge until the death of such tenant and, if the next of 1879. holder is then a minor, until such minor attains his majority;

and the said tenant shall, while the Court of Wards has charge of the estate or part, be debarred from receiving any income from the estate or part, other than such monthly sum as the Court of Wards may allow for the support of himself and his family;

and the powers conferred by sections 29 and 30 of this Act shall, while the Court of Wards has charge of the estate or part, be exerciseable by the Court of Wards and not by the said tenant.

PART VIII.

MISCELLANEOUS.

Form, publication and duration of permissions granted by Local Government.

35. (1) Every permission granted by the Local Government under section 8, section 10, sub-section (3), section 12, sub-section (4), section 13, section 16 or section 24 shall be in writing signed by one of

(Secs. 36-39.)

Secretaries to the Local Government, and shall contain a description of the property or person in respect of which the permission is granted, sufficient to identify the same.

- (2) Every permission granted by the Local Government under section 8, section 13, section 16 or section 24 shall be published by notification, and shall remain in force until the expiry of twelve months from the date of the notification, or until the death of the applicant, whichever first happens.
- **36.** Every notification prescribed by this Act shall be published in Notifications the Calcutta Gazette and also in such Vernacular Gazettes (if any) published. as the Local Government may direct.
- 37. (1) The Local Government may, after previous publication, [1] Power to make rules for carrying out the purposes of this Act.
- (2) In particular, and without prejudice to the generality of the foregoing provision, the Local Government may make rules for all or any of the following matters, namely:—
 - (a) the procedure to be followed in submitting an application to the Local Government under this Act;
 - (b) the form and contents of such applications and the documents (if any) which should accompany them;
 - (c) the payment to trustees, out of the trust property, of expenses properly incurred in or about the execution of any trust created under this Act, and of remuneration for their trouble, skill and loss of time in executing any such trust;
 - (d) the guidance of the Collector in managing estates attached under section 34;
 - (e) the payment or recovery of any expenses incurred by the Government in connection with any proceedings taken under this Act.

Ben. Act 9 of 1879.

- 38. The provisions of the Court of Wards Act, 1879,[2] so far as Application they are not inconsistent with the terms of settlements duly made under Wards Act, this Act, shall be applicable to settled estates.

 1879.[2]
- 39. Nothing in this Act shall affect the rights of any secured saving of creditor—
 - (a) if his incumbrances or any of them have not been set forth in secured creditors. the list prescribed by section 4, clause (c), or
 - (b) if he has not assented to any condition inserted in a settlement made under this Act for the discharge or continuance of his incumbrances or any of them.

^[1] As to previous publication, see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 26, in Vol. III of this Code.
[2] Printed ante, p. 279.

BENGAL ACT 3 OF 1905.

[THE BENGAL SMOKE-NUISANCES ACT, 1905.]

CONTENTS.

SECTION.

- 1. Short title and extent.
- 2. Power to extend Act.
- 3. Definitions.
- 4. Constitution of Commission.
- 5. Appointment of Inspectors.
- 6. Power to prohibit the erection of kilns or furnaces, or the manufacture of coke, in specified areas.
- 7. Power to order demolition of kilns or furnaces erected within prohibited areas.
- 8. Penalty when smoke is emitted to a greater extent than is permitted by rules.
- 9. Powers of Inspectors.
- 10. Rules.
- 11. Cognizance of offences.
- 12. Disposal of fines.
- 13. Repeal.

BENGAL ACT 3 OF 1905.

(THE BENGAL SMOKE-NUISANCES ACT, 1905.)[1]

(3rd May, 1905.)

An Act to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or 'fireplaces in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal.

Whereas it is expedient to amend the law relating to the abatement of nuisances arising from the smoke of furnaces or fire-places in the town and suburbs of Calcutta and in Howrah and to provide for the extension thereof to other areas in Bengal; [2]

It is hereby enacted as follows:—

- 1. (1) This Act may be called the Bengal Smoke-nuisances Act, Short title 1905; and
 - (2) It extends in the first instance to—

Ben. Act 4 of 1866.

- (a) the town of Calcutta, as defined in section 3 of the Calcutta Police Act, 1866;[3]
- (b) the suburbs of Calcutta, as for the time being defined by notifications published under section 1 of the Calcutta Suburban Police Act. 1866;[3] and

Ben. Act 2 of 1866.

(c) the station of Howrah, as described in the Schedule to the Howrah Offences Act, 1857.[4]

21 of 1857.

2. (1) The Local Government may, by notification published in the Power to Calcutta Gazette and in such other manner (if any) as the Local Government may determine, declare its intention to extend this Act to any specified area in Bengal^[2] other than the areas mentioned in section 1, sub-section (2):

IVA, pp. 5, 16, 25, 30 and 54.

LOCAL EXTENT.—This Act extends to the town and suburbs of Calcutta and the station of Howrah, and may be extended to other areas—see sections 1 and 2.

The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2) printed in Vol. I of this Code, and the Southal Parganas, by the Southal Parganas Settlement Regulation, 1872 (3 of

1872), s. 3(2) as amended by the Sonthal Parganas Justice and Laws
Regulation, 1899 (3 of 1895), s. 3, printed in Vol. I of this Code.

[2] This includes the present Province of Bihar and Orissa except the district of Sambalpur.

[3] Printed in Vol. II of the Bengal Code, 4th Ed., 1913-15.

[4] Printed in Vol. I of that Code.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1905, Pt. IV, p. 5; for Report of Select Committee, see ibid, Pt. IV, p. 11; and for Proceedings in Council, see ibid, 1904, Pt. IVA, p. 154; see ibid, 1905, Pt. IVA pp. 5 16 27 70 and 50

(Secs. 3-4.)

Provided that, if a military cantonment is situated within any area to which it is proposed to extend this Act, no notification shall be published under this sub-section in respect of such area without the previous sanction of the Governor General in Council.

- (2) Any inhabitant of an area to which it is proposed to extend this Act may, if he objects to such extension, submit his objection in writing to the Local Government within a period of three months from the publication of the said notification in the Calcutta Gazette.
- (3) At any time after the expiration of the said period, and after considering the objections (if any) submitted under sub-section (2), the Local Government may, by notification in the Calcutta Gazette, extend this Act to the said area.

Definitions.

- 3. In this Act,-
- (1) "furnace" means any furnace or fire-place used-
 - (a) for working engines by steam, or
 - (b) for the purpose of carrying on any trade, manufacture or industry, in cases not falling under clause (a):

Provided that a furnace or fire-place used for any of the following purposes shall not be deemed to be a furnace within the meaning of this Act, namely:-

- (i) household or domestic purposes;
- (ii) the raising of steam on ocean-going steamers within such period prior to their leaving the port, or to their moving from one part to another thereof, as may be prescribed by rule made under section 10, sub-section (2), clause (f), or
- (iii) the burning of the dead;
- (2) "Inspector" means a Chief Inspector of Smoke-nuisances, or an Assistant Inspector of Smoke-nuisances, appointed under this Act;
- (3) "the Commission" means the Bengal Smoke-nuisances Commission constituted under this Act;
- (4) the expression "owner" when used with reference to a furnace includes any agent or hirer using the furnace, and any foreman or other person superintending the working of the furnace; and
- (5) "Magistrate" means a Presidency Magistrate, a Magistrate of the first class or a Bench of Magistrates exercising first class powers 5 of 1898. under the Code of Criminal Procedure.

- Constitution of Commis-
- 4. (1) The Local Government shall, by notification in the Calcutta Gazette, constitute a Commission, to be called the Bengal Smoke-nuisances Commission, to supervise and control the working of this Act.
 - (2) The said Commission shall consist of a President and so many other members as the Local Government may determine.

Ben. Act 3 of 1899.

prohibit the

erection of

kilns or

(Secs. 5-6.)

- (3) One-half of the members (exclusive of the President) shall be officials nominated by the Local Government and the remainder shall be non-officials nominated in such manner as the Local Government may direct by bodies or associations whose interests are likely to be affected by this Act.
- (4) Subject to the provisions of sub-section (3), all members of the Commission shall be appointed, and all vacancies in the Commission shall, as occasion requires, be filled up by the Local Government by notification in the Calcutta Gazette.
- (5) No act done by the Commission shall be questioned on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Commission.
- 5. (1) The Local Government may, by notification in the Calcutta Appointment Gazette, appoint a Chief Inspector of Smoke-nuisances and so many of Inspectors. Assistant Inspectors of Smoke-nuisances as it may think fit.
- (2) Every Assistant Inspector appointed under sub-section (1) shall be subordinate to the Chief Inspector, and all Inspectors shall be subordinate to, and subject to the control of, the Commission.
- 6. (1) The Local Government may, by notification in the Calcutta Power to Gazette, prohibit, within any specified area,—

(a) the erection of brick, tile or lime kilns,

(b) the erection of furnaces to be used for the calcining or smelting furnaces, or the manuof ores or minerals, or for the casting, puddling or rolling facture of of iron or other metals, or for the conversion of pig-iron coke, in into wrought-iron, or

(c) the manufacture of coke in ovens, or with special appliances,

(d) the making of coke without ovens or special appliances:

Provided that, where prior to the issue of such notification a license has been granted by the Chairman of the Calcutta Corporation under the provisions of Chapter XXXIII of the Calcutta Municipal Act, 1899[1], for the erection of a furnace to be used for any of the purposes mentioned in clauses (a) and (b), or for the manufacture of coke as described in clauses (c) and (d), such notification shall not affect such furnace or such manufacture.

(2) If any kiln or furnace be erected in contravention of any notification issued under sub-section (1), clause (a) or clause (b), the owner thereof shall be liable to fine which may extend to two hundred and fifty rupees.

(3) If any person manufactures coke in contravention of any notification issued under sub-section (1), clause (c), he shall be liable to

^[1] The Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899), has been repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act 3 of 1923), printed in the Supplement to the Bengal Code, 1913-15, p. 425.

(Secs. 7-9.)

fine which may extend, on a first conviction, to two hundred and fifty rupces, and on any subsequent conviction to five hundred rupces.

(4) If any person makes coke in contravention of any notification issued under sub-section (1), clause (d), he shall be liable to fine which may extend, on a first conviction, to twenty-five rupees, and on any subsequent conviction to fifty rupees.

Power to order demolition of kilns or furnaces erected within prohibited areas.

- 7. (1) Whenever a Magistrate imposes a fine on any person under section 6, sub-section (2), for erecting a kiln or furnace in contravertion of any notification issued under section 6, sub-section (1), clause (a) or clause (b), he may by order direct such person to demolish the kiln or furnace within a period to be specified on the order.
- (2) If any person fails to demolish any kiln or furnace within the period prescribed in any such order, or within such longer period as the Magistrate may, for special reason, allow, he shall be liable to fine which may extend to twenty rupees for every day thereafter during which such failure continues.

Penalty when smoke is emailteel to permitted PULES.

- 8. (1) If smoke be emitted from any furnace in greater density, or at a lower altitude, or for a longer time than is permitted by rules made under this Act, the owner of the furnace shall be liable to fine which may extent than extend, on a first conviction, to fifty rupees, on a second conviction to one hundred rupees, and on any subsequent conviction to two hundred rupees.
 - (2) Sub-section (1) shall not apply to any furnace which is used—
 - (a) in connection with a brick, tile or lime kiln, or
 - (b) for any of the purposes mentioned in clause (b), clause (c), or clause (d) of section 6.

Powers of Inspectors.

- 9. (1) An Inspector may, after giving reasonable notice in writing to the owner, manager, engineer or person in charge,—
 - (a) enter and inspect, during working-hours, any building or place which contains a furnace, and inspect such furnace;
 - (b) under the written authority of the Commission, use and test any appliance used for preventing the emission of smoke from any such furnace; and
 - (c) under the written authority of the Commission, direct that any such furnace be worked or stoked experimentally, during his visit to such building or place, in any manner which he may consider suitable for preventing or reducing the emission of smoke, but not so as to interfere with the business carried on in such building or place further than is necessary for the purposes of the experiment.
- (2) If any owner of a furnace in respect of which a direction is given under clause (c) fails to secure compliance with such direction, he shall be liable to fine which may extend to one hundred rupees.

(Sec. 10.)

- 10. (1) The Local Government may, with the previous sanction of Rules. the Governor General in Council, and after previous publication,[1] make rules to carry out the objects of this Act.
- (2) In particular, and without prejudice to the generality of subsection (1), such rules may—
 - (a) regulate the transaction of business by the Commission;
 - (b) prescribe the powers and duties to be exercised and performed by the Commission and by Inspectors, respectively, and regulate the exercise and performance of those powers and duties;
 - (c) prescribe a scale for the purpose of determining the density of smoke;
 - (d) prescribe the density of smoke that may be emitted from a furnace;
 - (e) prescribe the time during which smoke of such density may be emitted from a furnace;
 - (f) prescribe the period during which, for the purpose of raising steam prior to leaving the port, or to moving from one part to another thereof, the furnaces of ocean-going vessels shall not be held to be furnaces within the meaning of this Act;
 - (g) prescribe the altitude below which smoke may not be emitted from a furnace;
 - (h) prescribe a procedure for the giving of warning to offenders before instituting a prosecution under this Act, and declare the minimum period which should be allowed to elapse in different classes of cases between the giving of such warning and the institution of a prosecution; and
 - (i) authorize the payment of a fee, not exceeding thirty-two rupees, to each or any member of the Commission attending a meeting of the Commission.
- (3) The date to be specified in accordance with clause (3) of Ben. Act section 24 of the Bengal General Clauses Act, 1899[2], as that after which a draft of rules proposed to be made under this section will be taken into consideration, shall not be less than three months from the date on which the draft of the proposed rules was published for general information.
 - (4) Any rule to be made under this Act shall, before it is published for criticism under sub-section (1), be referred to the Commission constituted under section 4, and the rule shall not be so published until the

^[1] As to previous publication, see the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), s. 26, in Vol. III of this Code.

^[2] See now the Bihar and Orissa General Clauses Act, 1917 (B. & O. Act 1 of 1917), in Vol. III of this Code.

760 The Bengal Smoke-Nuisances Act, 1905. [Ben. Act 3 of 1905.]

(Secs. 11-13.)

said Commission has reported as to the expediency of making the proposed rule and as to the suitability of its provisions.

(5) All rules made under this section shall be published in the Calcutta Gazette.

Cognizance of offences.

- 11. A Magistrate may take cognizance of an offence against this Act only—
 - (a) upon a complaint made by, or with the written authority of, the Chief Inspector, and
 - (b) within a period of two months from the date of the commission of the offence.

Disposal of fines.

12. All fines recovered under this Act shall be disposed of in such manner as the Local Government may direct.

Repeal.

13. The Calcutta and Howrah Smoke-nuisances Act, 1863, is Ben. Act 2 repealed.

BENGAL ACT 1 OF 1906.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1906.]

CONTENTS.

SECTION.

- 1. Short title.
- 2. Partial repeal of section 9 of Bengal Act 9 of 1879.
- 3. Insertion of new sections 10A to 10E.
- 4. Insertion of new section 13A in Bengal Act 9 of 1879.
- 5. New section 34A.
- 6. Partial repeal of section 56.
- 7. Insertion of new section 59A.
- 8. Insertion of new section 60B.
- 9. Repeal of section 62.
- 10. New section 64A.

BENGAL ACT 1 OF 1906.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1906.][1]

(28th March, 1906.)

new section

13A in Bengal Act

An Act to amend the Court of Wards Act, 1879.

Ben. Act & Whereas it is expedient to amend the Court of Wards Act, 1879; [2] of 1879. And whereas the previous sanction of the Governor General has been Vict., c. 14. obtained, under section 5[3] of the Indian Councils Act, 1892, to the provisions of this Act which affect Acts passed by the Governor General of India in Council;

It is hereby enacted as follows:—-

1. This Act may be called the Bengal Court of Wards (Amendment) Short title. Act, 1906.

Ben. Act 9 of 1879. 4 of 1892.

2. In section 9 of the Court of Wards Act, 1879[2] [as amended by Partial the Court of Wards Act (Bengal) Amendment Act, 1892],[4] the words, section 9 figures and letters from "And in any case in which the Court has taken of Bengal charge " to the end of the section are hereby repealed. 1879.

Ben. Act 9 of 1879.

3. After section 10 of the said Court of Wards Act, 1879,[2] the Insertion of new sections following shall be inserted, namely:— 10A to 10E.

10A to 10E. [Printed ante, pp. 283—285.]

4. After section 13 of the said Act the following shall be inserted, Insertion of namely :—

13A. [Printed ante, p. 286.]

9 of 1879. 5. After section 34 of the said Act, the following shall be inserted, New section namely :--

34A. [Printed ante, p. 292.]

Ben. Act 9 of 1879. 4 of 1892.

6. The words from "or to a proprietor" to the end of section 56 Partial of the Court of Wards Act, 1879[2] [as amended by the Court of Wards section 56. Act (Bengal) Amendment Act, 1892][4] are hereby repealed.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1905, Pt. IV, pp. 31, 32; for Proceedings in Council, see ibid, 17t. IVA., pp. 202 to 204, 209 to 213, and ibid, 1906, Pt. IVA, pp. 4 and 6 to 18.

The Act is in force in the Sonthal Parganas—see Vol. IV, Pt. IV; but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), rinted in Vol. I of this Code.

^[2] Printed ante, p. 279.

^[3] See now s. 80A (3) of the Government of India Act.

^[4] Printed in Vol. I of this Code.

[Ben. Act 1 of 1906.]

(Secs. 7-10.)

Insertion of new section 59A.

7. After section 59 of the said Act, [1] the following shall be inserted, namely:-

59A. [Printed ante, p. 300.]

Insertion of new section 60B.

8. After section 60A of the Court of Wards Act, 1879[1] [as amended Ben. Act 9 by the Court of Wards Act (Bengal) Amendment Act, 1892],[2] the of 1879. following shall be inserted, namely:-

60B. [Printed ante, p. 300.]

Repeal of section 62.

9. Section 62 of the Court of Wards Act, 1879, [1] is hereby repealed.

New section 64A.

10. After section 64 of the said Act, the following shall be inserted, namely:--

64A. [Printed ante, p. 301.]

^[1] Printed ante, p. 279. [2] Printed in Vol. I of this Code.

BENGAL ACT 2 OF 1906.

[THE BENGAL LAND REGISTRATION (AMENDMENT) ACT, 1906.]

CONTENTS.

SECTION.

- 1. Short title and commencement.
- 2. Amendment of Ben. Act 7 of 1876, section 3, clauses (2), (6) and (7).
- 3. Amendment of section 13.
- 4. Amendment of section 15.
- 5. New sections 19A and 19B.
- 6. Amendment of section 24.
- 7. Additions to sections 78 and 83.
- 3. Addition to section 30.
- 9. Amendment of section 31.
- 10. Amendment of section 53.
- 11. New section 53A.
- 12. Amendment of section 64.
- 13. Addition to section 70.
- 14. New section 74A.
- 15. Amendment of section 77.
- 16. Repeals.

BENGAL ACT 2 OF 1906.

[The Bengal Land Registration (Amendment) Act, 1906.][1]
(4th April, 1906.)

An Act to amend the Land Registration Act, 1876.

- Ben. Act 7 Whereas it is expedient to amend the Land Registration Act, or 1876. [2] It is hereby enacted as follows:—
 - 1. (1) This Act may be called the Bengal Land Registration Short title (Amendment) Act, 1906; and
 - [⁸](2) It shall come into force on such date as the Local Government may, by notification in the *Calcutta Gazette*, appoint in this behalf.
- Ben. Act 7 of 1876.

 2. (1) To sub-clause (c) of clause (2) of section 3 of the Land of Bengal of 1876.

 Registration Act, 1876,[2] the following words shall be added, namely:—Act 7 of 'or on any other register prescribed for the purpose by rule 1876, section 3, clauses (2), (6) and
 - (2) To clause (6) of the same section the words "or as a trustee (7). or executor" shall be added.
 - (3) For clause (7) of the same section the following shall be substituted, namely:—
 - (7) [Printed ante, p. 289.]
 - 3. (1) In section 13 of the said Act, after the word "such," where Amendment it first occurs, the following words shall be inserted, namely:—

 13.
 - "or that, in consequence of the preparation of a record-of-rights, or for any other reason, the circumstances of any district or part of a district are so altered."
 - (2) In the same section, after the words "to prepare" the words "or re-write or maintain" shall be inserted.
 - 4. In section 15 of the said Act, for the words "and a separate Amendment alphabetical arrangement, for each local division" the following words 15. shall be substituted, namely:—
 - "for each local division, and shall be so arranged as the Board may direct."

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see the Calcutta Gazette, 1905, Pt. IV, p. 26; and for Proceedings in Council, see ibid, Pt. IVA, pp. 200 and 209 and ibid, 1906, Pt. IVA, pp. 4 and 20.

The Act is in force in the Santal Parganas—see Vol. IV, Pt. IV; but its application is barred in the district of Angul by the Angul Laws Regulation, 1913 (3 of 1913), s. 3(2), in Vol. I of this Code.

^[2] Printed ante, p. 237.

^[3] The Act came into force on the 11th April 1906, see notification no. 1897-L. R., dated the 9th April, 1906, in the Calcutta Gazette, 1906, Pt. I, p. 787.

(Secs. 5-14.)

5. After section 19 of the said Act the following shall be inserted, New sections 19A and namely:--19B.

19A, 19B. [Printed ante, p. 246.]

6. In section 24 of the said Act, for the words "the alphabetical Amendment of section arrangement mentioned in section fifteen "the words "the arrangement 24. directed under section fifteen "shall be substituted.

7. To section 28 and to section 83 of the said Act the following Additions to sections 28 shall be added, namely:-and 83.

"the notice required under this section shall be served in the manner prescribed by section 50."

8. To section 30 of the said Act the following shall be added, Addition to section 30. namely:--

(e) [Printed ante, p. 250.]

9. In section 31 of the said Act, after the words "any information Amendment of section required by the Collector" the following words shall be inserted, 31. namely:---

> "or under clause (e) of the said section to give notice of his having assumed direct charge of an estate."

Amendment of section - 53.

10. In section 53 of the Act,

(a) after the word "witnesses" the words "and any applicant or his agent " shall be inserted; and

(b) for the words "in the case of a Civil Court" the words "in respect of witnesses "shall be substituted.

New section 53A.

11. After section 53 of the said Act the following shall be inserted, namely:-

53A. [Printed ante, p. 258.]

Amendment of section 64.

12. (1) Before the proviso in section 64 of the Land Registration Ben. Act 7 Act, 1876,[1] the following shall be inserted, namely: (3) [Printed ante, p. 260.]

(2) After the said proviso the following proviso shall be inserted, namely:-

"Provided also that the [2] Board may, by general or special order, remit the payment of fees payable for any transfer."

Addition to 13. To section 70 of the said Act the following shall be added, section 70. namely :--

[Printed ante, p. 263.]

14. After section 74 of the Land Registration Act, 1876,[1] the Ben. Act 7 New section 74A. following shall be inserted, namely:-

74A. [Printed ante, p. 265.]

^[1] Printed ante, p. 237.

^[2] The words "Commissioner of the Division" were substituted for the word "Board" in the second proviso to s. 64 of the Land Registration Act, 1876, by the Bihar and Orissa Decentralization Act, 1916 (B. & O. Act 3 of 1916), s. 2 and Schedule Part II-see Vol. III of this Code.

(Secs. 15-16.)

- Ben. Act 7 of 1876.
- 15. In section 77 of the Land Registration Act, 1876, [1] before Amendment the word "concerned" in the second place in which it occurs, the words of section "who is" shall be inserted.
- 16. (1) The following portions of the said Act are repealed Repeals. throughout Bengal, namely:—
 - (a) the second paragraph of section 5;
 - (b) in section 23, the words "and a note referring to such entry shall be made in the place in the general register in which such estate or property would have appeared according to the alphabetical arrangement mentioned in section five"; and
 - (c) section 25.
- (2) When any order has been issued under any clause of section 19A of the said Act (as amended by this Act), in respect of any district, the following portions of the said Act shall be deemed to be repealed in that district, namely:—

Clause (e) of section 7 and clause (e) of section 8.

- (3) When any order has been issued under clause (a) or clause (b) of the said section 19A in respect of any district, the following portions of the said Act shall be deemed to be repealed in that district, namely:—
 - (i) in clause (b) of section 8, the words "and the number which the estate bears in Part I of the general register of revenuepaying lands for its own district";
 - (ii) in clause (a) of section 18, the words "the number it bears on the general register of revenue-paying lands"; and
 - (iii) in clause (d) of the said section 18, the words "in each Part of the general register of revenue-paying lands and."
- (4) The following portions of the Bengal Land-revenue Sales Ben. Act 3 (Amendment) Act, 1862, [2] are hereby repealed, namely:—
 of 1862.
 - (i) in section 3, the words and figures "sections 10 and 11," and
 - (ii) clause 1 of the Schedule.

^[1] Printed ante, p. 237.

^[2] Printed ante, p. 3.

BENGAL ACT 3 OF 1906.

(THE BENGAL DISORDERLY HOUSES ACT, 1906.)

CONTENTS.

SECTION.

- 1. Short title and extent.
- 2. Power to direct discontinuance of use of a house as a brothel or by disorderly persons.

BENGAL ACT 3 OF 1906.

[THE BENGAL DISORDERLY HOUSES ACT, 1906.][1]

(4th April, 1906.)

by dis-

orderly

An Act to provide for discontinuance of Brothels and Disorderly Houses in certain localities in Bengal.

Whereas it is expedient to make provision for the discontinuance of brothels and disorderly houses in certain localities in Bengal;[2] It is hereby enacted as follows:-

- 1. (1) This Act may be called the Bengal Disorderly Houses Act, Short title and extent. 1906;
- (2) It applies to all municipalities constituted under the Bengal 8 Municipal Act, 1884; [3] and
 - (3) The Lieutenant-Governor may, by notification[4] in the Calcutta
 - Gazette, extend it to any specified local area not being a municipality. 2. (1) When any Magistrate of the first class receives information: - Power to
 - (a) that any house in the vicinity of any educational institution, direct disor of any boarding-house, hostel or mess used or occupied of use of by students, is used as a brothel or for the purpose of house as a habitual prostitution, or is used by disorderly persons of brothel or any description, or

(b) that any house is used as aforesaid to the annoyance of persons. respectable inhabitants of the vicinity, or

(c) that any house in the immediate neighbourhood of a cantonment is used as a brothel or for the purpose of habitual prostitution,

he may summon the owner, tenant, manager or occupier of the house to appear before him either in person or by agent; and, if satisfied that the house is used as described in clause (a), clause (b) or clause (c), as the case may be, may, by written order, direct such owner, tenant, manager or occupier, within a period to be stated in such order, not less than five days from the date thereof, to discontinue such use;

Provided that action under this sub-section shall be taken only-

(i) with the sanction or by the order of the District Magistrate; or

^[1] Legislative Papers.—For Statement of Objects and Reasons, see the Calcutta Gazette, 1905, Pt. IV, p. 22; and for proceedings in Council, see ibid, Pt. IVA, pp. 173 and 190 and ibid, 1906, Pt. IVA, pp. 4 and 24.

[2] This includes the present Province of Bihar and Orissa. The Act is in force in the Sonthal Parganas and in the district of Angul. See Vol. IV, Pt. IV, of this Color.

^[8] Repealed and re-enacted by the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), printed in Vol. III of this Code.
[4] For a list of places to which this Act has been extended under s. 1 (3), see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Pt. VI.

(Sec. 2.)

- (ii) on the report of the Commissioners of the municipality concerned; or
- (iii) on the complaint of three or more persons resident in the immediate vicinity of the house to which the complaint refers.
- (2) If any person against whom an order has been passed by a Magistrate under sub-section (1) fails to comply with such order within the period stated therein, the Magistrate may impose on him a fine which may extend to twenty-five rupees for every day after the expiration of that period during which the house is so used:

Provided that no fine shall be imposed on an owner if he is able to prove to the satisfaction of the Magistrate that he has taken such action as is within his power to comply with the order.

BENGAL ACT 1 OF 1907.

[THE BENGAL TENANCY (AMENDMENT) ACT, 1907.]

CONTENTS.

SECTION.

- 1. Short title.
- 2. Repeal of sections 14 and 45 of Act 8 of 1885.
- 3. Additions to section 1.
- 4. Amendment of clauses (5) and (10) of section 3.
- 5. Amendment of sections 12 and 13(2). 6. Amendment of sections 13 (1) and 15.
- 7. Amendment of section 16.
- 8. New Chapter IVA, sections 18A to 18C.
- 9. Amendment of section 19.
- A mendment of section 22.
- 11. Amendment of section 40.
- 12. New section 40A.
- 13. Addition to section 52.
- 14. Amendment of section 58.
- 15. Amendment of section 67. 16. Amendment of section 69.
- 17. Amendment of section 75.
- 18. Amendment of section 88.
 19. Amendment of sub-section (2) of section 101.
- 20. Amendment of section 102. 21. New section 102A.

- 22. Amendment of section 103B.
 23. Amendment of heading to Part II of Chapter X.
 24. Amendment of sections 104 and 105.
- 25. Amendment of sub-section (3), clause (g), of section 104H.
- 26. New section 105A.
- 27. Addition of proviso to section 106.
- 28. Amendment of section 107.
- 29. Amendment of section 198.
- 30. New section 108A.
- 31. Amendment of section 109.
- 32. Amendment of section 109A.
- 33. New sections 109B, 109C and 109D.
- 34. Amendment of section 111.
- 35. New section 111B.
- 36. Amendment of section 112.
- 37. Amendment of section 114.
- 38. New section 115A.
- 39. Addition to heading to Chapter XI.
- 40. Amendment of section 116.
- 41. Amendment of section 120.
- 42. New sections 147A and 147B.
- 43. Amendment of section 148.
- 44. New section 148A.
- 45. Amendment of sections 149 and 150.
- 46. Addition of Explanation to section 153.
- 47. New section 153A.
 48. Amendment of sub-section (1) of section 158.
 49. New Chapter XIIIA and new section 158A.
 50. New section 158B.

- 51. Addition of clause (c) to section 161.

SECTION.

52. Amendment of section 168.

53. Amendment of sub-section (1) of section 169 and addition of proviso.

54. Amendment of section 170.

- 55. Amendment of section 174.
- 56. Amendment of sub-section (3) of section 178.

57. New heading and new section 186A.
58. New section 188A.
59. New clauses (2), (3) and (4) in section 189.
60. Amendment of section 192.

61. Amendment of Schedule III.

BENGAL ACT 1 OF 1907.

[THE BENGAL TENANCY (AMENDMENT) ACT, 1907.][1]

(22nd May, 1907.)

An Act to amend and supplement the Bengal Tenancy Act, 1885. [2]

8 of 1885. Whereas it is expedient to amend the Bengal Tenancy Act, 1885,[2] in the manner hereinafter appearing;

And whereas the previous sanction of the Governor General has been obtained under section 5[s] of the Indian Councils Act, 1892, to the passing of this Act;

It is hereby enacted as follows:—

- 1. This Act may be called the Bengal Tenancy (Amendment) Act, Short title. 1907.
- 8 of 1885.

 2. Sections 14 and 45 of the Bengal Tenancy Act, 1885,[2] are Repeal of sections 14 and 45 of Act 8 of 1885.
- 3. (1) In sub-section (3) of section 1 of the said Act, after the Additions to words "the town of Calcutta" the words "any area constituted a section 1.

 Ben. Act 3 Municipality under the provisions of the Bengal Municipal Act, 1884, or part thereof, and specified in a notification in this behalf by the Local Government" shall be inserted.
 - (2) To the said sub-section the following Explanation shall be added, namely:—

Explanation.—[Printed at p. 403 in Vol. I of this Code.]

The application of the Act is barred in-

the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (%), printed in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

The whole of this Act has been repealed in the Orissa Division by the Orissa Tenancy Act, 1913 (B. & O. Act 2 of 1913); s. 2 and Sch. I, printed in Vol. III of this Code.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1906, Pt. IV, pp. 14 to 19; for Report of the Select Committee, see Calcutta Gazette Extraordinary, dated the 9th March, 1907, Pt. IV, pp. 1 to 16; for Proceedings in Council, see Calcutta Gazette, 1906, Pt. IVA, pp. 174 to 191, 209 and ibid, 1907, Pt. IVA, pp. 11, 16, 153 to 198 and 200 to 216.

^[2] Printed in Vol. I of this Code.

^[3] Now see s. 80A(3) of the Government of India Act.

(Secs. 4-9.)

Amendment of clauses (5) and (10) of section 3. 4. In section 3 of the Bengal Tenancy Act, 1885,[1]—

8 of 1885.

- (1) in clause (5), after the word and figures "Chapter XII," the word and figures "Chapter XIV" shall be inserted;
- (2) for clause (10) the following shall be substituted, namely:— (10) [Printed at p. 405 in Vol. I of this Code.]

Amendment of sections 12 and 13 (2).

- 5. (1) To sub-section (2) of section 12 of the said Act the following shall be added, namely:--
 - "together with the costs necessary for the transmission of the landlord's fee to the landlord."
- (2) In sub-section (3) of the said section, and in sub-section (2) of section 13,—
 - (i) after the words "landlord's fee" the words "the costs necessary for the transmission of the same" shall be inserted;
 - (ii) for the word "paid" the word "transmitted" shall be substituted, and
 - (iii) after the word "landlord" the words "named in the notice" shall be inserted.

Amendment of sections

- 6. (1) In sub-section (1) of section 13 of the said Act, after the 3 (1) and words "foregoing section," and in section 15 after the word and figures "section 12," the words "together with the costs necessary for its transmission to the landlord "shall be inserted.
 - (2) In the said section 15,—
 - (i) for the word "paid" the word "transmitted" shall be substituted, and
 - (ii) after the word "landlord" the words "named in the notice" shall be inserted.

Amendment of section 16.

7. In section 16 of the said Act, for the words "and fees" the words "fees and costs" shall be substituted.

New Chapter 8. After section 18 of the said Act the following shall be inserted, IVA, sections 18A to namely :-18C.

Chapter IVA.—18A to 18C. [Printed at p. 412 in Vol. I of this Code.

Amendment of section 19.

- 9. (1) Section 19 of the Bengal Tenancy Act, 1885[1] shall be 8 of 1885. re-numbered section 19, sub-section (1).
- (2) In the said sub-section (1), after the words "this Act," in both places where they occur, the words, brackets and figures " or the Bengal Ben. Act 1 Tenancy (Amendment) Act, 1907," shall be inserted.
- (3) After the said sub-section (1) the following shall be inserted, namely:-
 - (2) [Printed at p. 413 in Vol. I of this Code.]

^[1] Printed in Vol. I of this Code.

(Secs. 10-15.)

8 of 1885.

8 of 1885.

- 10. In section 22 of the Bengal Tenancy Act, 1885,[1]—

 Amendment of section
 - (a) in sub-section (1), for the words "the occupancy-right shall 22. cease to exist" the words "such person shall have no right to hold the land as a tenant, but shall hold it as a proprietor or permanent tenure-holder (as the case may be)" shall be substituted;
 - (b) in sub-section (2) for the words from "it shall cease to exist" to the end of the sub-section the following shall be substituted, namely:—

[Printed at p. 414 in Vol. I of this Code.]

- . (c) in sub-section (3), after the word "acquire" the words "by purchase or otherwise" shall be inserted.
- 11. In section 40 of the said Act,—

Amendment

- (i) in sub-section (1), after the words "partly in another" the of section words "or partly in any of those ways and partly in cash "shall be inserted;
- (ii) in sub-section (2), for the words "an officer making a settlement of rents" the following shall be substituted, namely:—
 - "a Revenue-officer appointed by the Local Government under the designation of Settlement Officer or Assistant Settlement Officer for the purpose of making a survey and record-of-rights;"
- (iii) in clause (b) of sub-section (4), the word "and" shall be omitted, and
- (iv) to the said sub-section (4) the following shall be added, namely:—

[Printed at p. 423 in Vol. I of this Code.]

- 12. After section 40 of the said Act the following shall be New section inserted, namely:—
 - 40A. [Printed at p. 423 in Vol. I of this Code.]
- 13. To section 52 of the said Act the following shall be added, Addition to namely:—

 section 52.
 - (6) [Printed at p. 428 in Vol. I of this Code.]
- 14. For sub-section (3) of section 58 of the said Act the following Amendment shall be substituted, namely:—

 of section 58.
 - (3) to (8) [Printed at pp. 430-431 in Vol. I of this Code.]
 - 15. In section 67 of the Bengal Tenancy Act, 1885,[1]—
 Amendment of section
 - (a) after the word "twelve" the words "and-a-half" shall be 67. inserted, and

(Secs. 16-20.)

(b) for the words "to the institution of the suit" the words "to the date of payment or of the institution of the suit, whichever date is earlier," shall be substituted.

Amendment of section 69.

16. (1) To sub-section (3) of section 69 of the said Act the following shall be added, namely:—

[Printed at p. 436 in Vol. I of this Code.]

- (2) To the said section the following shall be added, namely:-
 - (4) [Printed at p. 436 in Vol. I of this Code.]

Amendment of section 75.

17. In section 75 of the Bengal Tenancy Act, 1885,[1] after the 8 of 1885, word "rent" the words "or interest" shall be inserted.

Amendment of section 88.

- 18. (1) In section 88 of the said Act, for the words "with his consent in writing" the words "with his express consent in writing, or with that of his agent duly authorized in that behalf" shall be substituted.
- (2) To the same section the following proviso shall be added, namely:—

[Printed at p. 443 in Vol. I of this Code.]

Amendment of sub-section (2) of section 101.

- 13. In sub-section (2) of section 101 of the said Act,—
 - (1) For clause (a) the following clause shall be substituted, namely:—
 - (a) [Printed at pp. 447-448 in Vol. I of this Code.]
 - (2) to clause (c) the following shall be added, namely:—
 "or a Manager appointed by the District Judge under section 95."

Amendment of section 102.

- 20. In section 102 of the said Act,-
 - (1) after clause (d) the following clause shall be inserted, namely:—
 - " (dd) the name of each proprietor in the local area or estate,"
 - (2) after clause (g) the following clause shall be inserted, and shall be deemed to have been so inserted from the commencement of the Bengal Tenancy (Amendment) Act, Ben. Act 3 1898,[2] namely:—

 of 1898.

(gg) [Printed at p. 449 in Vol. I of this Code.]

(3) after clause (h) the following shall be inserted, namely:—
"(i) any right of way or other easement attaching to the land for which a record-of-rights is being prepared;"

and the existing clause (i) shall be re-lettered clause (j).

^[1] Printed in Vol. I of this Code.

¹²⁷ Printed ante n. 606.

(Secs. 21-30.)

8 of 1885.

21. After section 102 of the Bengal Tenancy Act, 1885,[1] so New section amended, the following shall be inserted, namely:—

102A. [Printed at pp. 449-50 in Vol. I of this Code.]

22. For section 103B of the said Act the following shall be Amendment substituted, namely:—

103B. Amendment of section 103B.

103B. [Printed at pp. 450-51 in Vol. I of this Code.]

- 23. In the heading to Part II of Chapter X of the said Act, for Amendment the words "decision of disputes" the words "disposal of objections to Part II shall be substituted.

 of Chapter X.
- 24. (1) In clause (b) of section 104, and in sub-section (2) of Amendment section 105 of the said Act, for the word, letter and brackets 104 and 105. "clause (i)" the word, letter and brackets "clause (j)" shall be substituted.
- (2) To the said section 104 the following proviso shall be added, namely:—

[Printed at p. 451 in Vol. I of this Code.]

- 25. In clause (g) of sub-section (3) of section 104H of the said Act, Amendment for the words "have not been recorded or have" the words "or any tion (3), right of way or other easement attaching to the land which is the subject clause (g), of the tenancy have not, or has not, been recorded or have, or has," 104H. shall be substituted.
- 26. After section 105 of the said Act the following shall be New section inserted, namely:—

105A. [Printed at p. 458 in Vol. I of this Code.]

27. To section 106 of the said Act the following proviso shall be Addition of proviso to added, namely:—

Addition of proviso to section 106.

[Printed at p. 459 in Vol. I of this Code.]

28. In section 107 of the said Act,-

Amendment, of section

- (a) in sub-section (1), for the words and figures "In all of section proceedings for the settlement of rents under this Part, and in all proceedings under section 106" the words, figures and letter "In all proceedings under section 105, section 105A and section 106" shall be substituted, and
- (b) for sub-section (2) the following shall be substituted, namely:—

(2) [Printed at p. 459 in Vol. I of this Code.]

- 29. In section 108 of the said Act after the word and figures Amendment "section 105" the word, figures and letter "section 105A" shall be of section inserted.
- 30. After section 108 of the said Act the following shall be New section inserted, namely:—

108A. [Printed at p. 460 in Vol. I of this Code.]

^[1] Printed in Vol. I of this Code.

(Secs. 31-37.)

Amendment of section 109.

31. In section 109 of the said Act, for the words and figures "or suit instituted under section 105, section 106, section 107 or section 108", the words, figures and brackets "suit instituted or proceedings taken under sections 105 to 108 (both inclusive)" shall be substituted.

Amendment of section 109A.

32. In sub-section (2) of section 109A of the said Act, after the figures "108" the letter "A" shall be inserted.

New sections 109B, 109C and 109D.

33. In Part IV of Chapter X of the said Act so amended, immediately before section 110, the following shall be inserted, namely:—

109B to 109D. [Printed at pp. 461-62 in Vol. I of this Code.]

Amendment of section 111.

34. In section 111 of the said Act, after the word "entertain" the words and figures "any application made under section 158, or "shall be inserted.

New section 111B.

35. After section 111A of the said Act, the following shall be inserted, namely:—

111B. [Printed at p. 436 in Vol. I of this Code.]

Amendment of section 112.

- **36.** (1) In sub-section (1) of section 112 of the said Act, for the words "invest a Revenue-officer acting under this Chapter" the following shall be substituted, namely:—
 - "or that any landlord is demanding rents which have been illegally enhanced above those entered as payable in a record-of-rights prepared under this Chapter, invest a Revenue-officer".

(2) After sub-section (2) of the said section the following shall be inserted, namely:—

" (2a) A settlement of rents under this section shall be made in the manner provided by sections 104 to 104J (both inclusive)."

* * * * [1]

Amendment of section 114.

- 37. In section 114 of the said Act,-
 - (1) In sub-section (1),—
 - (a) the words "by the Government" are hereby repealed, and
 - (b) for the words "from time to time in the maintenance," the following shall be substituted, namely:—
 - "at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration";
 - (c) after the word "proportions" the words and brackets "and in such instalments (if any)," shall be inserted.

^[1] Sub-section (3) of sec. 36 was repealed by the Devolution Act, 1920 (38 of 1920), s. 3 and Sch. II, printed in Vol. I of this Code.

(Secs. 38-46.)

- (2) after sub-section (1), the following shall be inserted, namely:—
 - (2) [Printed at p. 466 in Vol. I of this Code.]
- (3) the present sub-section (2) shall be re-numbered subsection (3), and
- (4) after sub-section (3), so re-numbered, and before the Explanation, the following shall be inserted, namely:—
 (4) [Printed at p. 466 in Vol. I of this Code.]
- 38. After section 115 of the said Act the following shall be New section inserted, namely:—

115A. [Printed at pp. 466-67 in Vol. I of this Code.]

- 39. To the heading to Chapter XI of the Bengal Tenancy Act, Addition to heading to Chapter XI.

 8 of 1885. 1885,[1] the following words shall be prefixed, namely:— Chapter XI.
 - " Non-accrual of occupancy and non-occupancy rights, and ".

40. In section 116 of the said Act, after the words "shall apply to "Amendment the following shall be inserted, namely:—

116.

1 of 1894.

"lands acquired under the Land Acquisition Act, 1894, for the Government or for any Local Authority or for a Railway Company, or lands belonging to the Government within a Cantonment, while such lands remain the property of the Government or of any Local Authority or Railway Company, or to ".

8 of 1885.

41. After sub-section (2) of section 120 of the Bengal Tenancy Act, Amendment 1885,[1] the following shall be inserted, namely:—

of section 120.

(2a) [Printed at p. 468 in Vol. I of this Code.]

42. After section 147 of the said Act the following shall be New sections inserted, namely:—

147 and 147B.

147A, 147B. [Printed at pp. 476-77 in Vol. I of this Code.]

8 of 1885.

43. (1) After clause (b) of section 148 of the Bengal Tenancy Act, Amendment 1885,[1] the following shall be inserted, namely:—

1885,[1] the following shall be inserted, namely:—

148.

(b1), (b2) [Printed at pp. 477-478 in Vol. I of this Code.]

(2) After clause (f) of the same section the following shall be inserted, namely:—

(ff) [Printed at pp. 478-479 in Vol. I of this Code.]

44. After section 148 of the said Act the following shall be New section inserted, namely:—

148A. [Printed at p. 479 in Vol. I of this Code.]

- 45. The words "except for special reasons to be recorded in Amendment of sections writing", in sections 149 and 150 of the said Act, are hereby repealed. 149 and 150.
- 46. To section 163 of the said Act the following Explanation shall Addition of Explanation to section 153.

Explanation.—[Printed at p. 481 in Vol. I of this Code.]

^[1] Printed in Vol. I of this Code.

(Secs. 47-56.)

New section 47. After section 153 of the said Act the following shall be 153A. inserted, namely:-

153A. [Printed at p. 481 in Vol. I of this Code.]

Amendment of sub-section (1) of

48. In sub-section (1) of section 158 of the Bengal Tenancy Act, 1885,[1] before the words "The Court having jurisdiction" the words 8 of 1885. section 158. and figures "Subject to the provisions of section 111" shall be inserted.

New Chapter XIIIA and new section namely :--158A.

49. After section 158 of the said Act the following shall be inserted,

Chapter XIIIA.—S. 158A[2]. [Printed at pp. 484-486 in Vol. I of this Code.

New section 158B.

50. In Chapter XIV of the Bengal Tenancy Act, 1885,[1] 8 of 1885. immediately before section 159, the following shall be inserted, namely:--

[3] 158B. [Printed at pp. 486-87 in Vol. I of this Code.]

Addition of clause (c) to section 161.

51. To section 161 of the said Act the following shall be added, namely: --

(c) [Printed at p. 488 in Vol. I of this Code.]

Amendment of section 168.

and

52. In sub-section (1) of section 168 of the said Act, for the words "decrees for rent" the words "a decree for an arrear of rent" shall be substituted.

53. (1) In clause (c) of sub-section(1) of section 169 of the said Amendment Act, after the words "the date of" the words "the confirmation of sub-section (1) of of "shall be inserted. section 169

(2) To the said sub-section the following proviso shall be added, namely:-

[Printed at p. 492 in Vol. I of this Code.]

Amendment of section 170.

addition of

proviso.

54. In section 170 of the said Act, after the words and brackets " (both inclusive)," the word, figures and letter " and 310A" shall be inserted.

Amendment of section 174.

55. To the proviso to sub-section (2) of section 174 of the said Act the following shall be added, namely:-

"and if he applies under this section, he shall not be entitled to make an application under section 311 of the Code of 14 of 1882. Civil Procedure."[4]

Amendment of sub-sec-

56. (1) In proviso (iii) to section 178 of the Bengal Tenancy Act, 1885, [5] after the words "cultivation of" the words "horticultural 8 of 1885. section 178. or "shall be inserted.

> [1] Printed in Vol. I of this Code. [2] A new Chapter XIIIA was substituted for this Chapter by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), s. 69, Sch. III, Pt. I, printed in Vol. III of this Code.
>
> [3] A new sub-section (1) of s. 158B was substituted by ibid.
>
> [4] This reference should now be taken to be made to rule 90 in Order XXI in

> Schedule I to the Code of Civil Procedure, 1908 (Act 5 of 1908)-see s. 158 thereof. [5] The Bengal Tenancy Act, 1885. It is printed in Vol. I of this Code.

(Secs. 57-61.)

(2) To the same proviso the following Explanation shall be added, namely:--

Explanation.—[Printed at p. 497 in Vol I of this Code.]

- 57. After section 186 of the said Act the following shall be New heading inserted, namely:and new section 186A.
 - "Damages for denial of landlord's title."

186A. [Printed at p. 500 in Vol. I of this Code.]

58. After section 188 of the said Act the following shall be New section 188A. inserted, namely:-

188A. [Printed at p. 501 in Vol. I of this Code.]

59. For sub-section (2) of section 189 of the said Act the New clauses (2), (3) and (4) in secfollowing shall be substituted, namely: tion 189.

(2) to (4) [Printed at pp. 501-02 in Vol. I of this Code.]

- 60. In section 192 of the said Act, before the words "fix a fair Amendment and equitable rent "the words "or of his own motion shall" be of section 192. inserted.
 - 61. In Schedule III to the said Act.—

(1) after Article 1 the following shall be inserted, namely:—

Amendment of Schedule

" (a) To eject a non-occupancy raiyat on the ground of the expiration of the term of his lease,	•	The expiration of the term,"
i	- 1	

- (2) in Article 2,—
 - (a) after the words "arrear of rent" the following shall be inserted, namely:-
 - " in a suit brought by-
 - (i) a sole landford,
 - (ii) the entire body of landlords, or
 - (iii) one or more co-sharer landlords ".
 - (b) for the entry in the third column opposite clause (b) the following entry shall be substituted, namely:-

"the last day of the agricultural year in which the arrear fell due."

- (3) in Article 3, for the words "an occupancy-raiyat" the words " a raiyat or an under-raiyat" shall be substituted.
- (4) in Article 6, for the words "under this Act, or any Act repealed by this Act," the words "in a suit between landlord and tenant to whom the provisions of this Act are applicable," shall be substituted.

BENGAL ACT 5 OF 1908.

[The Bengal Local Self-Government (Amendment) Act, 1908.]

CONTENTS.

SECTION.

- 1. Short title.
- 2. Repeal of portions of Bengal Act 3 of 1885.
- 3. Addition to section 5.
- Amendment of sections 7, 11 and 15.
- 5. New section 10.
- Amendment of proviso to section 13.
- 7. Amendment of section 17.
- Amendment of section 18.
- 9. New section 18A.
- 10. New sections 19 and 19A.
- 11. Amendment of section 22.
- 12. New section 23A.
- 13. Amendment of section 25.
- 14. New sections 26 and 26A.
- 15. Amendment of section 27.
- 16. New sections 29 and 29A.
- 17. Amendment of section, 32.
- 18. Amendment of section 33.
- 19. New section 35.
- 20. New section 35A.
- 21. Amendment of section 36.
- 22. New section 41A.
- 23. Amendment of section 44.
- 24. Addition to section 48.
- 25. Addition to section 50.
- 26. Amendment of section 52.
- 27. Amendment of section 53. 28. New section 53A.
- 29. Amendment of section 56.
- 30. Amendment of section 58.
- 31. Amendment of section 59.32. Amendment of section 60.
- 33. New section 61.
- 34. New section 63.
- 35. New section 64A.
- 36. Amendment of section 65
- 37. New sections 65A and 65B.
- 38. Addition to section 67.
- 39. Amendment of section 73.
- 40. New section 78A.
- 41. Amendment of section 82.
- 42. Addition to section 86.
- 43. New heading and new sections 86A to 86M.
- 44. New section 88A.
- 45. New section 91.
- 46. Amendment of section 99. 47. New section 99A.
- 48. Amendment of section 100.
- 49. Amendment of section 104.
- 50. Amendment of sections 105 to 107.

SECTION.

- 51. Amendment of sections 108 and 109.
 52. Amendment of section 110.
 53. New section 111.
 54. New section 114.
 55. New sections 115 to 119.
 56. Amendment of section 130.
 57. Amendment of section 131.
 58. Amendment of section 132.
 59. New section 133.
 60. Amendment of section 138.

- 60. Amendment of section 138. 61. Amendment of section 139. 62. Amendment of section 142.

- 63. Addition to section 144.
- 64. Amendment of Schedule II.

BENGAL ACT 5 OF 1908.

[The Bengal Local Self-Government (Amendment) Act, 1908.][1]

(28th October, 1908.)

Bengal Act

An Act to amend the Bengal Local Self-Government Act of 1885.[2]

Whereas it is expedient to amend the Bengal Local Self-Ben. Act 3 Government Act of 1885[2] in manner hereinafter appearing;

It is hereby enacted as follows:--

- 1. This Act may be called the Bengal Local Self-Government Short title. (Amendment) Act, 1908.
- 2. The following portions of the Bengal Local Self-Government Repeal of portions of Ben. Act 3 Act of 1885[2] are hereby repealed, namely:

in section 1, the words "or of the districts of Singhbhum, the 3 of 1885.

Sonthal Parganas or the Chittagong Hill-tracts ":

[3] in the proviso to section 6, the words "and in any other subdivision to which the provisions of the next succeeding Chapter shall have been extended ":

[⁸] section 16;

of 1885.

[3] section 24;

[3] the last paragraph of section 25;

section 34:

[4] Section 72;

the proviso to section 73, and

in section 103, the words "A Local Board shall exercise powers of supervision and control over all Union Committees within the area under its authority, and ".

3. To section 5 of the said Act, the following shall be added, Addition to namely:-

[5] "and sanitation includes water-supply."

[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1906, Pt. IV, p. 58; for Report of Select Committee, see ibid, 1907, Pt. IV, pp. 11 to 17; and ibid, 1908, Pt. IV, pp. 115, 116; for Proceedings in Council, see ibid, 1906, Pt. IVA, pp. 191 to 196, 209; ibid 1907, Pt. IVA, pp. 16, 17, 221; ibid, 1908, Pt. IVA, pp. 202, 216 to 234.

LOCAL EXTENT.—Since this Act has no local extent clause, it must be taken originally to have extended to those territories, at the time comprised in the Province of Bengal, in which the Bengal Local Self-Government Act of 1885 (Ben. Act 3 of 1885), which

this Act amends, was in force.

The application of the Act is barred inthe Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code; and

the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation (3 of 1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws Regulation, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

[2] This Act is now called the Bihar and Orissa Local Self-Government Act of 1885 -see the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 3(a), in Vol. III of this Code.

[3] New sections 6, 16, 24 and 25 were inserted by ibid, s. 5.

[4] A new section 72 was inserted by ibid, s. 26.

[5] A new definition of "sanitation" was substituted by s. 4(e) ibid.

(Secs. 4-12.)

Amendment [1] 4. (1) In section 7 of the said Act, after the figures "22" the of sections 7, 11 and 15. words, figures and letter "section 23A or section 29" shall be inserted.

(2) For the words "Lieutenant-Governor," where they occur in the sixth paragraph of section 7, in section 11, and in the first paragraph of section 15 of the said Act, the word "Commissioner" shall be substituted.

New section 10.

[1] 5. For section 10 of the said Act, the following shall be substituted, namely:—

10. * * * * * *

Amendment of proviso to section 13. [1] 6. In clause (2) of the proviso to section 13 of the said Act, for the words "the area under the authority of such Local Board" the words "the subdivision for which such Local Board has been established" shall be substituted.

Amendment of section 17.

[1] 7. In section 17 of the said Act, for the words "Lieutenant-Governor" and for the word "Commissioner," in both places in which they respectively occur, the word "Commissioner" and the words "District Board," respectively, shall be substituted.

Amendment of section 18.

- [1] 8. (1) Section 18 of the said Act shall be re-numbered section 18, sub-section (1).
 - (2) In the said sub-section (1),—
 - (i) for the words "Lieutenant-Governor," wherever they occur, the word "Commissioner" shall be substituted;
 - (ii) for the words "or Local Board" the words "Local Board or Union Committee" shall be substituted;
 - (iii) in clause (a), the words from "or is convicted" to the words "unfits him to be a member" are hereby repealed.
 - (3) To the said section the following shall be added, namely:—
 - "(2) Any member who is removed under sub-section (1) may appeal to the Lieutenant-Governor, whose decision shall be final."

New section 18A.

[1] 9. After section 18 of the said Act, the following shall be inserted, namely:—

18A. * * * * * *

New sections 19 and 19A. [1] **10.** For section 19 of the said Act, the following shall be substituted, namely:—

19, 19A. * * * * * *

Amendment of section 22.

[1] 11. In section 22 of the said Act, after the word "elected" the words "either by name or by virtue of his office" shall be inserted.

New section 23A,

[1] 12. After section 23 of the said Act, the following shall be inserted, namely:—

23A. * *

^[1] New sections were substituted for the sections amended or inserted by these sections, by s. 5 of the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), printed in Vol. III of this Code.

(Secs. 13-17.)

[17] 13. In section 25 of the said Act,—

Amendment

(a) after the word "elected" the words "either by name or by of section virtue of his office "shall be inserted; and

(b) for the words "Lieutenant-Governor," in the first, second, fourth and fifth places in which they occur, the word "Commissioner" shall be substituted.

[1] 14. For section 26 of the said Act, the following shall be New sections substituted, namely:-

26, 26A. *

[1] 15. In section 27 of the said Act, for the words "to the Amendment Lieutenant-Governor; and, on such resignation being accepted," the of section following shall be substituted, namely:-

"in the case of a Chairman of a District Board, to the Lieutenant-Governor, and, in the case of a Chairman of a Local Board, to the Commissioner; and, on sucn resignation being accepted by the Lieutenant-Governor or Commissioner, as the case may be ".

[1] 16. For section 29 of the said Act, the following shall be New sections substituted, namely:-

29. 29A. *

17. In section 32 of the said Act,—

[2] (a) for the words " Every District Board, and every Local Board Amendment with the sanction of the District Board," the following shall be of section substituted. namely:-

"Any District Board, with the sanction of the Commissioner and subject to the control of the Lieutenant-Governor, and any Local Board, with the sanction of the District Board and of the Commissioner and subject to the control of the Lieutenant-Governor;"

(b) for the words "leave, suspension and removal," in clause (g), the words "leave, leave allowance and punishment (including suspension and removal) " shall be substituted;

[2] (c) after the words "and may" the words "with the like sanc-

tion and subject to the like control "shall be inserted; and

[2] (d) for the concluding paragraph the following shall be

substituted, namely:-"All rules made under this section, and all orders repealing or altering any such rules, shall be published in such manner as the Lieutenant-Governor may direct; and, so far as they are consistent with this Act and with any rules made

these clauses by s. 8, ibid.

^[1] New sections were substituted for the sections amended or substituted by these sections by the Bihar and Orissa Local Self-Government Act, 1923 (B. &. O. Act 1 of 1923), ss. 5 and 6, printed in Vol. III of this Code.

[2] New paragraphs were substituted for the paragraphs substituted or amended by

(Secs. 18-26.)

by the Lieutenant-Governor hereunder, shall, upon such publication, have the force of law."

Amendment [1] 18. In section 33 of the said Act, after the words and figures of section "under section 30" the following shall be inserted, namely:—

" or by an Education Committee referred to in section 65B."

New section 19. For section 35 of the said Act, the following shall be substituted, namely:—

35. [Printed ante, p. 538.]

New section 20. After section 35 of the said Act, the following shall be inserted, 55A.

35A. [Printed ante, p. 538.]

Amendment of section 36 of the said Act, for the words of section 36. "the Local Board to which the Union Committee creating such appointment is subordinate" the words "the District Board" shall be substituted.

New section 22. After section 41 of the said Act, the following shall be inserted, namely:—

41A. [Printed ante, p. 540.]

Amendment of section 44 of the said Act, for the words "the Local Board to which it is subordinate as hereinafter provided," and for the words "the Local Board," the words "the District Board" shall be substituted.

Addition to [2] 24. To section 48 of the said Act, the following shall be added, section 48. namely:—

Addition to 25. To section 50 of the said Act, the following shall be added, section 50. namely:—

[Printed ante, p. 542.]

Amendment of section 52.

26. (1) After clause (1) of section 52 of the said Act, the following shall be inserted, namely:—

" (1a) all sums received under any loan raised under section 50."

(2) For clause (3) of the said section 52, the following shall be substituted, namely:—

"(3) all sums directed by notification under section 31 of the Cattle-trespass Act, 1871, to be placed to the credit of the ¹ of 1871. Fund."

(3) After clause (5) of the said section 52, the following shall be inserted, namely:—

" (5a) all receipts accruing within the district from tolls or leases under Part III, heading D (1), of this Act."

^[1] This amendment was superseded by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 9(a), printed in Vol. III of this Code.

^[2] A new section was substituted for s. 48 by ibid, s. 12,

(Secs. 27-31.)

(4) Before the final sentence of the said section 52, the following shall be inserted, namely:—

[1] *

Ben. Act 3 of 1885.

[$^{\hat{2}}$]27. (1) In the first line of section 53 of the Bengal Local Self-Amendment Government Act of 1885 after the words "the District Fund shall" of section the following shall be inserted, namely:—

Ben. Act 9 of 1880.

- "subject to the provisions of section 109 of the Cess Act, 1880, as amended by this Act."
- (2) In clause Fourthly of the said section 53, after the figures "35" the following shall be inserted, namely:—
 - "and of any grants made for supplementing contributions by members of such establishments to any Provident Fund created under section 35A."
- (3) For clause Fifthly of the same section, the following shall be substituted, namely:—

Fifthly.—[Printed ante, p. 545.]

- (4) In clause Sixthly of the same section, for the words "of the travelling expenses incurred by members of the District Board in attending meetings of the Board or meetings of a Joint Committee," the following shall be substituted, namely:—
 - (a) Rep. by B. and O. Act 1 of 1923, s. 14(e).

(b) to (d) [Printed ante, p. 546.]

- (5) In proviso (1) to the said section 53, after the word "that" the words, figures and letter "except as is provided in section 99A" shall be inserted.
- (6) After proviso (2) to the said section 53, the following shall be inserted, namely:—
 - (3) Rep. by B. and O. Act 1 of 1916, s. 23(2).

Ben. Act 3 of 1885. 28. After section 53 of the Bengal Local Self-Government Act of New section 1885, the following shall be inserted, namely:— 53A.

53A. [Printed ante, p. 548.]

Ben. Act 3 of 1885.

29. For clause (1) of section 56 of the Bengal Local Self-Government Act of 1885, the following shall be substituted, namely:—

of section 56.

"(1) all sums directed by notification under section 31 of the

1 of 1871.

Cattle-trespass Act, 1871, to be placed to the credit of the Fund."

Ben. Act 3 of 1885.

- 30. In section 58 of the Bengal Local Self-Government Act of 1885, Amendment for the words "the Local Board to which such Union Committee is 58. subordinate" the words "the District Board" shall be substituted.
 - 31. In section 59 of the said Act, for the letter "D" the letter Amendment E" shall be substituted.

[1] A new paragraph was substituted for the portion inserted by this sub-section, by the B. & O. Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), s. 22(b), in

Vol. III of this Code.

[2] For further amendments to s. 53 of Ben. Act 3 of 1885, see s. 23 of the Bihar and Orissa Cess (Amendment) Act, 1916 (B. & O. Act 1 of 1916), and s. 14 of the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), printed in Vol. III of this Code.

(Secs. 32-43.)

Amendment of section 60 of the said Act, for the letter "E" the letter of section F" shall be substituted.

New section 33. For section 61 of the said Act, the following shall be substituted, namely:—

61. [Printed ante, p. 551.]

New section 34. For section 63 of the Bengal Local Self-Government Act of Ben. Act 3 of 1885, the following shall be substituted, namely:—

63. [Printed ante, p. 552.]

New section 35. After section 64 of the said Act, the following shall be inserted, namely:—

64A. [Printed ante, p. 553.]

Amendment of section 65 of the said Act, for the words "the improvement of primary schools within the district under private management," the following shall be substituted, namely:—

(a) to (c) [Printed ante, p. 553.]

New sections 65A and 65B.

37. After section 65 of the said Act, the following shall be inserted, namely:—

65A. [Printed ante, p. 554.]

[1] 65B. *

Addition to 38. To section 67 of the Bengal Local Self-Government Act of Ben. Act 3 of 1885, the following shall be added, namely:—

[Printed ante, p. 555.]

Amendment of section 73.

• 39. In section 73 of the said Act, after the words "for the purposes of this Act" the words and figures "but subject to the provisions of Chapter III of Part III thereof" shall be inserted.

New section 78A.

40. After section 78 of the said Act, the following shall be inserted, namely:—

78A. [Printed ante, p. 558.]

Amendment of section 82.

- 41. (1) In section 82 of the said Act, for the words "Lieutenant-Governor" the words "Governor General in Council" shall be substituted.
 - (2) To the same section the following shall be added, namely:—
 [Printed ante, p. 559.]

Addition to section 86.

42. To section 86 of the said Act, the following shall be added, namely:—

[Printed ante, p. 560.]

New heading and namely:—
sections namely:—
sea to 86M.

43. After section 86 of the said Act, the following shall be inserted, sely:—

"D (I).—Tolls on Bridges.
86A to 86C. [Printed ante, pp. 560-561.]

86A to 86C. [Frinted *unie*, pp. 560-561.]
[2] 86D. * * * * * *

86E to 86M. [Printed ante, pp. 562-563.]

^[1] A new section was substituted for section 65B by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 22, printed in Vol. III of this Code.

^[2] A new section was substituted for section 86D by ibid, s. 32.

(Secs. 44-50.)

- 44. After section 88 of the said Act, the following shall be inserted, New section namely:—
 - 88A. [Printed ante, p. 564.]

Ben. Act 9 of 1880.

- [1] 45. For section 91 of the Bengal Local Self-Government Act of New section 1885, the following shall be substituted, namely:—

 91.
 - 91* * * * *
- **46.** (1) In the heading over section 99 of the said Act, for the Amendment word "Relief" the words "and Distress" shall be substituted.
- (2) In the said section, after the word "famine" the words "or serious distress" shall be inserted.
 - (3) To the said section the following shall be added, namely:—
 - "(4) distribute such gratuitous relief, in the form of doles of money or food, as may be necessary."
- 47. After section 99 of the said Act, the following shall be inserted, New section namely:—
 - 99A. [Printed ante, p. 567.]
- 48. (I) In section 100 of the said Act, for the words "subject Amendment to any rules made by the Lieutenant-Governor," the words "subject of section to such rules and restrictions as the Lieutenant-Governor may, from time to time, prescribe" shall be substituted.
- (2) In clause (3) of the said section, for the word "its," the word "the" shall be substituted.
- (3) After the said clause (3), the following shall be inserted, namely:—
 - (3a) to (3d) [Printed ante, pp. 568-569.]
- **49.** In section 104 of the said Act, for the words "Local Board," Amendment in both places in which they occur, the words "District Board" shall of section be substituted.
- **50.** (1) In sections 105, 106 and 107 of the said Act, for the Amendment words "Local Board," wherever they occur, the words "District of sections 105 to 107. Board" shall be substituted.
- (2) In the said section 105, for the words "an estimate of the probable expenditure of the Committee," the words "an estimate of the probable receipts and expenditure of the Committee under each head of account" shall be substituted.
- (3) To the said section 105 the following shall be added. namely:—
 - "Every estimate submitted under this section shall be subject to the sanction of the District Board, who may, before sanctioning any estimate, modify it as they may think fit."
- (4) In the said section 107, after the words "village roads," the words "and bridges thereon" shall be inserted.

^[1] A new section was substituted for section 91 by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 39, printed in Vol. III of this Code.

(Secs. 51-58.)

Amendment of sections 108 and 109.

- 51. (1) After the words "village roads," in section 108 of the said Act, and where they first occur in section 109 thereof, the words "and bridges thereon" shall be inserted.
- (2) In the said section 108, after the words "such roads" the words "and bridges" shall be inserted.
- (3) After the word "road," in clauses (c) and (d) of the said section 109, the words "or bridge thereon" shall be inserted.

Amendment of section 110.

- 52. In section 110 of the said Act,—
 - (a) for the words "Local Board," in the first and third places in which they occur, the words "District Board" shall be substituted; and
 - (b) for the words "Local Board," in the second place in which they occur, the words "District Board or of a Local Board" shall be substituted.

New section 111.

53. For section 111 of the said Act, the following shall be substituted, namely:—

111. [Printed ante, p. 571.]

New section 114.

- 54. For section 114 of the said Bengal Local Self-Government Act Ben. Act 3 of 1885, the following shall be substituted, namely:—
 - 114. [Printed ante, p. 572.]

New sections 115 to 119.

55. For sections 115 to 119 of the said Act, the following shall be substituted, namely:—

115 to 119. [Printed ante, pp. 572-577.]

Amendment of section 130.

- (a) after the figures "124" the figures "125" shall be inserted,
 - (b) for the words "by the Local Board" the words and figures "by the District Board or the Local Board to which the Committee may have been declared, by an order under section 119, to be, for the purposes of this section, subordinate" shall be substituted.
- (2) In the third paragraph of the same section, after the words "Local Board" the words "or Union Committee" shall be inserted.

[1]57. In section 131 of the said Act, after the words "Local Board," in both places in which they occur, the words "or Union Committee" shall be inserted.

Amendment of section 131.

[2]58. In section 132 of the said Act,—

Amendment of section 132.

(1) after the words "Local Board," in the first four places in which they occur, the words "or Union Committee" shall be inserted, and

^[1] New section was substituted for section 131 as amended by this section by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 53, printed in Vol. III of this Code.
[2] New section was substituted for section 132 as amended by this section 1.

(Secs. 59-60.)

- (2) after the words "the Board," in the second place in which they occur, the words "or Committee" shall be inserted.
- 59. For sections 133 and 134 of the said Act, the following shall New section be substituted, namely:-

133. [Printed ante, p. 582.]

60. (1) To clause (a) of section 138 of the said Act, the following Amendment shall be added, namely:—

"and determining the authority who shall decide disputes relating to such elections."

- (2) In clause (f) of the same section, for the word "immediate" the word "intermediate" shall be substituted.
- (3) To clause (g) of the same section, the following shall be added, namely:-
 - "and declaring what circumstances shall be a disqualification for continuance of employment under that section."
- (4) After clause (h) of the same section, the following shall be inserted, namely:—

(h1). [Printed ante, p. 584.]

[1] (h2). *

- (5) After clause (j) of the same section, the following shall be inserted, namely,:-
 - (j1) to (j3) [Printed ante, p. 585.]
- (6) to clause (k) of the said section 138, the following shall be added, namely :--
 - "the training and employment of compounders, midwives and veterinary practitioners, and the promotion of free vaccination."
- (7) To clause (m) of the same section, the following shall be added, namely:-
 - "and prescribing conditions precedent to the making of any contribution under section 79."
- (8) After clause (m) of the said section 138, the following shall be inserted, namely:-

(m1), (m2) [Printed ante, p. 586.]

- (9) In clause (n) of the said section 138, after the words "District Boards " the words " and Sanitation Committees " shall be inserted.
- (10) After clause (0) of the said section 138, the following shall be inserted, namely:-

" (o1) [Printed ante, p. 586.]

^[1] A new clause was substituted for clause (h2) by the Bihar and Orissa Local Self-Government (Amendment) Act, 1923 (B. & O. Act 1 of 1923), s. 57(6).

(Secs. 61-64.)

- (11) In clause (p) of the same section, after the word "animals," the following shall be inserted, namely:-
 - "the establishment and maintenance of veterinary dispensaries, the appointment and payment of qualified persons to prevent and treat diseases of horses, cattle and other animals, the improvement of the breed of horses, cattle or asses, and the breeding of mules, the making of grantsin-aid under clause (3d) of section 100 of this Act."
- (12) After clause (q) of the same section, the following shall be inserted, namely:--
 - (q1) [Printed ante, p. 586.]
 - (13) To the same section the following shall be added, namely:-
 - "In making any rule under clause (q1) of this section, the Lieutenant-Governor may provide that a breach of the same shall be punished with fine which may extend to ten rupees."

Amendment of section 139.

- 61. In section 139 of the said Act,-
 - (a) before the words "make by-laws" the words "subject to the control of the Lieutenant-Governor" inserted; and
 - (b) for the words "confirmed by the Lieutenant-Governor" the words "confirmed by the Commissioner" shall be substituted.

Amendment of section 142.

62. In section 142 of the said Act, before the words "or Union Committee " the words " Local Board " shall be inserted.

Addition to section 144.

- 63. To section 144 of the said Act, the following shall be added, namely :---
- "Nothing in this section shall apply to the payment of fees to a legal practitioner for services rendered by him in his professional capacity."

Amendment of Schedule П.

- [1] 64. In the third column of the Second Schedule to the said Act, after the words "shall be credited to the District Fund of the district" the following shall be inserted, namely:--
 - "and shall be applicable to the following objects, and in the following order, namely:-
 - (a) the payment of any sums which the District Board may, under the Bengal Local Self-Government Act of 1885, Ben. Act 5

^[1] Section 109 of the Cess Act, 1880 (Ben. Act 9 of 1880) to which the amendments made by this section relate, was repealed in districts in which the Bihar and Orissa Local Self-Gevernment Act, 1885 (Ben. Act 3 of 1885), is in force, by the Bihar and Orissa Cess (Amendment) Act, 1986 (B. & O. Act 1 of 1916) s. 3(2), printed in Vol. III of this Code.

(Sec. 64.)

from time to time have undertaken to pay as interest on loans raised for expenditure on any of the objects to which the District Road Fund is applicable, and the repayment of such loans;

- (b) the payment of the percentage referred to in clause Thirdly of section 53 of the said Act;
- (c) the payment of such of the salaries, pensions, gratuities, grants and percentages referred to in clause Fourthly of the said section as are required for members of establishments employed for improving the means of communication within the district or between the district and other districts;
- (d) the payment of such of the expenses referred to in clause Fifthly of section 53 of the said Act as are incurred in improving the means of communication within the district or between the district and other districts, or in carrying out the provisions of section 79 of the said Act;
- (e) the payment of the expenses referred to in clause Seventhly of section 53 of the said Act; and
- (f) the making of investments referred to in clause Eighthly of the said section 53."

BENGAL ACT 6 OF 1908.

(THE CHOTA NAGPUR TENANCY ACT, 1908.)

CONTENTS.

CHAPTER I.

PRELIMINARY.

SECTION.

- 1. Short title and extent.
- 2. Repeal.
- 3. Definitions.

CHAPTER II.

CLASSES OF TENANTS.

- 4. Classes of tenants.

- Classes of tenants.
 Meaning of "tenure-holder".
 Meaning of "raiyat".
 Meaning of "raiyat having khunt-katti rights".
 Meaning of "Mundari khunt-kattidar".

CHAPTER III.

TENURE-HOLDERS.

- 9. Tenure-holder when not liable to enhancement of rent.
 9A. Enhancement of rent of tenure-holder or village headman.
 10. Certain bhuinhars not liable to enhancement of rent.
 11. Registration of certain transfers of tenures.
 12. Procedure on refusal of landlord to allow registration of transfer of tenure.
 13. Division of tenure or distribution of rent.
- 14. Annulment of incumbrances on resumption of resumable tenure.
- 15. Saving of rights of landlord.

CHAPTER IV.

OCCUPANCY-RAIYATS.

General.

- 16. Continuance of existing occupancy-rights.17. Definition of "settled raiyat".18. Bhuinhars and Mundari khunt-kattidars to be settled raiyats in certain cases.
- 19. Settled raiyats to have occupancy-rights.
- 20. Effect of acquisition of occupancy-right by landlord.

Incidents of occupancy-right.

- 21. Rights of occupancy-raiyat in respect of use of land
- 22. Protection of occupancy-raivat from eviction except on specified grounds.

SECTION.

23. Devolution of occupancy-right on death.
23A. Registration of certain transfers of occupancy-holdings.

24. Obligation of occupancy-raiyat to pay rent.

Enhancement of Rent.

25. Presumption that rent of occupancy-raiyat is fair and equitable.

26. Confirmation of rents enhanced prior to commencement of this Act.

27. Methods in which rent of occupancy-raiyat may be enhanced.
28. Contents of application to Deputy Commissioner for enhancement.
29. Procedure on receipt of such application.

30. Power to direct gradual enhancement.

Increase of Rent in respect of Excess Area.

31. Application for increase of rent in respect of land held in excess of the area

for which rent was previously paid.

32. Procedure on receipt of such application.

33. Savings.

Reduction of Rent.

34. Application to Deputy Commissioner for reduction of rent.

35. Procedure on receipt of such application.

Bar to further enhancement or reduction of rent.

36. Bar to further enhancement or reduction of rent where there is no record-ofrights.

CHAPTER V.

RATYATS HAVING KHUNT-KATTI RIGHTS.

37. Incidents of tenancy of raiyat having khunt-katti rights.

CHAPTER VI.

NON-OCCUPANCY-RAIYATS.

38. Initial rent and lease of non-occupancy-raiyat.

39. Effect of acquisition by landlord of the right of a non-occupancy-raiyat in his

40. Conditions of enhancement of rent of non-occupancy-raiyat.
41. Grounds on which non-occupancy-raiyat may be ejected.

42. Conditions of ejectment on ground of refusal to agree to pay a fair and equitable rent.

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS IV AND VI.

43. Bar to acquisition of right of occupancy in, and to application of Chapter VI to, landlords' privileged lands and certain other lands.

CHAPTER VIII.

LEASES AND TRANSFERS OF HOLDINGS AND TENURES.

44. Raiyat entitled to a lease.

45. Landlord entitled to counterpart engagement.

46. Restrictions on transfer of their rights by raiyats.
47. Restrictions on sale of raiyata' rights under order of Court.
48. Restrictions on transfer and sale of bhuinhari tenures.
49. Transfer of occupancy-holding or bhuinhari tenure for certain purposes.

SECTION.

50. Acquisition of tenure or holding by landlord for certain purposes.
51. Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

CHAPTER IX.

GENERAL PROVISIONS AS TO RENT.

Presumptions as to fixity of rent.

51A. Presumptions as to fixity of rent.

Payment of Rent.

52. Instalments.

53. Methods of payment of rent.54. Receipts for rent and interest thereon.

55. Deposit of rent in Court of Deputy Commissioner.
56. Procedure on receipt of deposit, and payment of same.
57. Limitation of suit or application for rent due prior to deposit.

Arrears of Rent.

58. What to be deemed arrear of rent; interest on arrears.

59. Ejectment of tenure-holder and cancellation of lease for arrears.

60. Arrear of rent to be first charge on tenancy.

Commutation of Rent payable in Kind.

61. Commutation of rent payable in kind.

62. Period for which commuted rents are to remain unaltered.

Penalties for illegal exaction of praedial conditions or of anything in excess of rent or of local cess.

63. Penalty on landlord for levying anything in excess of rent (including local cess) or of lawful prædial conditions.

CHAPTER X.

MISCELLANEOUS PROVISIONS AS TO LANDLORD AND TENANT. Korkar.

64. Cases in which consent of landlord is required for conversion of land into

65. Power to eject cultivator or leave him in possession.

66. Prohibition against conversion of certain land into korkar.

67. Right of occupancy in korkar.

Ejectment.

68. Tenant not to be ejected except in execution of decree or order.

69. Relief against forfeitures.

70. Decree or order for ejectment when to take effect.

71. Power to replace in possession tenant unlawfully ejected.

Surrender and Abandonment.

72. Surrender of land by raiyat.

73. Abandonment of land by raiyat.

Continuance of Occupation.

74. Effect of lease purporting to admit to occupation after occupation has commenced.

74A. Determination of person to be village-headman when tenancy vacant.

Measurements.

75. Measurement of lands.

CHAPTER XI.

CUSTOM AND CONTRACT.

SECTION.

76. Saving of custom.

77. Saving as to service tenures and holdings.

78. Homesteads.

79. Restrictions on exclusion of Act by agreement.

CHAPTER XII.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

80. Power to order survey and preparation of record-of-rights.

81. Particulars to be recorded.
82. Power to order survey and preparation of record-of-rights as to water.

83. Preliminary publication, amendment and final publication of record-of-rights. 84. Presumptions as to final publication and correctness of record-of-rights.

85. Settlement of fair rents.

86. Decision of issues arising during course of settlement of rents.

87. Institution of suits before Revenue-officer.
87A. Under-tenant to be made party in certain proceedings and suits.
88. Entry in record-of-rights of rents settled and decisions made.

89. Revision by Revenue-officer.

Nevenue-officer.
 Correction by Revenue-officer of mistakes in record-of-rights.
 Stay of certain proceedings before Deputy Commissioner or Civil Court when order made for preparation of record-of-rights.
 Bar to jurisdiction of Courts in matters relating to record-of-rights.
 Stay of certain proceedings before Deputy Commissioner or Civil Court when record-of-rights finally published.
 Period for which represented in the record-of-rights are to remain unclared.

94. Period for which rents entered in the record-of-rights are to remain unaltered.

95. Expenses of proceedings under this Chapter.

96. Power of Revenue-officer to give effect to agreement or compromise.
97. Date from which settled rent takes effect.
98. Revision of record-of-rights, and new settlement of rents, under orders of Local Government.

99. Enhancement of rent where application under section 98 is rejected.

100. Validation of directions given, before the commencement of this Act, for the record of certain rights.

100A. 'Application of certain provisions to rights of pasturage, to take forest produce, etc., and to payments in respect thereof.

CHAPTER XIII.

Praedial Conditions, and the Commutation and Record thereof.

101. Prohibition against new prædial conditions.
102. Liability of tenant when original conditions of tenancy cannot be ascertained.
103. Method of calculating present value of prædial condition.
104. Procedure in suit for rent and value of prædial conditions.
105. Voluntary commutation of prædial conditions.
106. Power to order record of prædial conditions, with or without commutation.
107. Preparation of record.
108. Publication of record.
109. Appeal from orders of Bevenue-officers.

109. Appeal from orders of Revenue-officers.

110. Revision by Commissioner or Board.

111. Procedure where a survey and record-of-rights are being made.
112. Note of decisions in record-of-rights.
113. Decision of question as to whether a payment in kind is a prædial condition or a payment of rent in kind.

114. Commencement and effect of commutation.

115. Expenses of voluntary commutation.
116. Expenses of record and compulsory commutation.

117. Saving of right to claim reduction or enhancement of rent.

CHAPTER XIV.

RECORD OF LANDLORDS' PRIVILEGED LANDS.

118. Definition of "landlords' privileged lands".
119. Power to direct a survey and record of landlords' privileged lands.
120. Application of certain sections.

121. Power to record landlords' privileged lands on application of landlord or tenant.

122. Procedure in inquiries.

125. Presumption that lands are not landlords' privileged lands.
124. No land in certain villages to be recorded as landlords' privileged lands.
125. Exclusion of unrecorded lands from category of landlords' privileged lands.

126. Appeal.

CHAPTER XV.

RECORD-OF-RIGHTS AND OBLIGATIONS OF RAIVATS HAVING KHUNT-KATTI RIGHTS, VILLAGE HEADMEN AND OTHER CLASSES OF TENANTS.

127. Record-of-rights and obligations of raiyats having khunt-katti rights, village headmen and other classes of tenants.

128. Application of certain sections.

129. Notice of entries to interested persons.

130. Suits to decide disputes as to entries in, or omissions from, record.

131. Note of finel decisions in record.

132. Evidential value of entries.

133. Revenue-officer to have regard to origin and nature of tenancy and status of

134. Exclusion of unrecorded lands from category of khunt-katti lands.

CHAPTER XVI.

JUDICIAL PROCEDURE IN MATTERS COGNIZABLE BY THE DEPUTY COMMISSIONER.

135. Place for holding Deputy Commissioner's Court.

136. Office for instituting suits and making applications.

137. Withdrawal of suits. 138. Jurisdiction where land is situated in more than one district or subdivision. 139. Certain suits and applications cognizable only by the Deputy Commissioner.
139A. Exclusive jurisdiction of Deputy Commissioner in certain cases.
140. Collective suits or applications.

141. Order or decree in collective suit or on collective application to specify how far it affects each tenant.

142. Suit by co-sharer landlord for rent.

143. Institution of suits by presentation of statement of claim.
144. Additional particulars required in statement of claim in certain suits and in certain applications.

145. Substitution of copies or extracts for original documents admitted in evidence.

146. Statement of claim by whom to be presented.
147. Signature and verification of statement of claim.
148. Production of documents by plaintiff.
149. Production of documents by defendant.
150. Return or amendment of statement of claim.

151. Issue of summons to defendant.

- 151. Issue of summons to defendant.
 152. Attendance of defendant personally or by agent.
 153. Production of documents and witnesses.
 154. Deposit of cost of serving summons.
 155. Procedure when neither party appears.
 156. Procedure when only the defendant appears.
 157. Procedure when only the plaintiff appears.
 158. Production of documents by defendant.
 159. Heaving of defendant on day to which case is not defendant.

159. Hearing of defendant on day to which case is postponed.

160. Exemption of women from personal attendance.

161. Employment of agents. 162. Power to grant time or adjourn hearing. 163. Examination and cross-examination of parties or their agents and of witnesses; written statement by defendant. 164. Conduct and record of examination.
165. Power to direct attendance of party whose agent cannot answer material question.
166. Decree when to be made. 167. Power to postpone trial to take further evidence. 168. Production of witnesses. 169. Procedure when neither party appears on day fixed for final hearing of suit. 170. Judgment. 171. Local inquiries.
172. Payment into Court by defendant, after tender to plaintiff.
173. Payment into Court by defendant, without prior tender to plaintiff. 174. Prohibition of interest on sums paid into Court. 175. Power to award damages to plaintiff in rent-suit. 176. Power to award compensation to defendant in rent-suit. 177. Precedure where third party claims right to receive rent. 178. Suit for ejectment of non-occupancy-raivat, or cancelment of lease of any tenant, for arrears of rent. 179. Power of Deputy Commissioner to grant lease to raiyat in default of landlord. 180. Procedure where tenant fails to deliver counterpart engagement to landlord. Execution of Decrees and Orders of the Deputy Commissioner. 181. Limitation of time for application for execution. 181A. Application for execution by assignee of rent decree. 182. Decrees and orders by what Court to be executed.

183. Form of application for execution.

184. Issue of process of execution.

185. Form of warrant of execution against person or movable property. 186. Exemptions from attachment and sale. 187. Indication of movable property to be seized. 188. Duration of warrant of execution. 189. Second and successive warrants of execution. 190. Notice when to be given before issue of warrant of execution. 191. Procedure when judgment-debtor is arrested. 192. Further proceedings after discharge from jail. 193. Diet-money for subsistence of prisoners. 194. Execution of decree or order for ejectment or re-instatement of cultivator.
195. Execution of decree or order for cancelment of lease, for ejectment, or for re-instatement of tenant not being an actual cultivator.
196. Execution of decree for rent given in favour of sharer in undivided estate or 197. Execution of rent decree obtained by a co-sharer landlord. 198. Execution against immovable property in certain cases, if judgment not satisfied. Sales in Execution of Decrees of the Deputy Commissioner. 199. Notification of intended sale of movable property, and custody of property. 200. Interval between seizure and sale. 201. Place and manner of sale. 202. Prohibition of purchase by officers.

203. Postponement of sale if fair price be not offered.

204. Payment of purchase-money, and delivery of property to purchaser.

205. Application of proceeds of sale.

206. Procedure where third party claims interest in property seized.

207. Irregularities not to vitiate sale. 208. Sale of tenure or holding in execution of decree for arrears of rent. 209. Disposal of proceeds of sale under section 208. 210. Sale of other property in execution of decree for arrears of rent of tenure or holding. 211. Procedure where third party claims to be in lawful possession of tenure or holding. 212. Application to set aside sale of immovable property, on deposit of debt and

compensation to purchaser.

213. Application to set aside sale of immovable property on ground of irregularity.

213A. Sale in execution deemed set aside when rent decree set aside, and restoration of status quo ante.

214 Grounds on which suit or application to set aside sale may be brought.

11

SECTION.

Appeals.

215. Appeal from orders of Deputy Commissioners.
216. Limitation of appeals from such orders.
217. Bar to further appeals, with proviso for revision by Board or Commissioner.
218. Appeal in certain suits.
219. Appeal to Deputy Commissioner when to be presented.

220. Appeal when to be heard.

221. Re-admission of appeal.
222. Re-hearing of appeal on application of respondent against whom ex parts decree passed.

223. Judgment in appeal.

224. Appeal to Judicial Commissioner or High Court.

225. Hearing of appeals by Judicial Commissioner instead of by Deputy Commissioner.

226. Limitation of appeal to Judicial Commissioner or High Court.

227. Power to set uside judgment or order passed ex parte by default. 228. Order to set aside judgment final, but rejection of application to set aside appealable.

229. Application of section 561 of the Code of Civil Procedure.

CHAPTER XVIA.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BIHAR AND ORISSA Public Demands Recovery Act, 1914.

229A. Recovery of arrears of rent under the certificate procedure in certain cases.

CHAPTER XVII.

LIMITATION.

- 230. Application of the Indian Limitation Act, 1908.
 230A. Special rule of limitation in certain applications and suits before a Revenue-Officer.
 - 231. General rule of limitation.

231. General rule of limitation.

232. Limitation of suits and applications for grant of leases, etc.

233. Limitation of certain suits for ejectment.

234. Limitation of suits and applications for arrears of rent.

235. Successive suits or applications for recovery of rent.

236. Limitation of suits against agents for money, accounts or papers.

237. Limitation of applications for recovery of possession of holding.

238. Limitation of suits or applications by village headmen for recovery of possession.

CHAPTER XVIII.

Special provisions with respect to Mundari khunt-kattidars.

239. Application of preceding sections to Mundari khunt-kattidari tenancies.

240. Restrictions on transfer of Mundari khunt-kattidari tenancies.

241. Transfer for certain purposes.
242. Ejectment of persons unlawfully obtaining possession of such tenancies.
243. Enhancement of rent. 244. Recovery of arrears of rent under the certificate procedure, where there is a record-of-rights.

245. Reference of question of title to Civil Court.

246. Recovery of arrear of rent by suit where there is no record-of-rights.

240. Recovery of arrear of rent by sure where there is no record-of-rights.

247. Joinder of parties in proceedings under section 244 or 246.

248. Recovery of money due to the Government or rent due to a landlord.

249. Recovery of contributions from co-sharer tenants.

250. Entry of Mundari khunt-kattidari tenancies in record-of-rights.

251. Bar to suits under section 87. 252. Decision of disputes regarding entries or omissions in record-of-rights.

SECTION.

253. Appeal against such decisions.

254. Entry of decision in record-of-rights.

255. In preparing record-of-rights, judgments, etc., in suits not to be taken as evidence that tenancies are or are not Mundari khunt-kattidari tenancies. 256. Record-of-rights to be conclusive evidence on the question whether a tenancy is a Mundari khunt-kattidari tenancy.

CHAPTER XIX.

SUPPLEMENTAL PROVISIONS.

Joint-landlords.

257. Joint-landlords.

Bar to suits and finality of decisions in certain cases.

258. Bar to suits in certain cases.

Process.

259. Mode of service.

260. Authentication and payment of costs.

261. Costs in suits and applications. 262. Deposit of costs of proceedings to be incurred by the Government..

Production of Witnesses and Documents.

263. Production of witnesses and documents.

Rules and Notifications.

264. Power to make rules to carry out objects of Act. 265. Power to make rules as to procedure, and application of the Code of Civil Procedure.

266. Publication of rules in draft.

267. Publication and effect of rules and notifications.

Recovery of Dues.

268. Recovery of dues.

Powers.

269. Transfer of cases from one Revenue-officer to another.

270. Control over Deputy Commissioners and Deputy Collectors.

Saving of special Enactments.

271. Saving of special enactments.

SCHEDULE A .- Acts and Notification repealed in the Chota Nagpur Division, except the district of Manbhum. SCHEDULE B .- Acts prospectively repealed in the district of Manbhum.

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BENGAL ACT 6 OF 1908.

THE CHOTA NAGPUR TENANCY ACT, 1908.

(11th November, 1908.)

An Act to amend and consolidate certain enactments relating to the law of Landlord and Tenant and the settlement of rents in Chota Nagpur.

Whereas it is expedient to amend and consolidate certain enactments relating to the law of landlord and tenant and the settlement of rents in Chota Nagpur;

And whereas the sanction of the Governor-General has been 55 and 56. obtained, under section 5 of the Indian Councils Act, 1892[2] to the Vict., c. 14 passing of this Act;

It is hereby enacted as follows:—

CHAPTER I.

Preliminary.

1. (1) This Act may be called the Chota Nagpur Tenancy Act, Short title and extent. 1908;

-, dated the 22nd

February 1924, p. 155, Bihar and Orissa Gazette, 1924, Part II.)

For Statement of Objects and Reasons of the Chota Nagpur Tenancy (Amendment)
Act, 1929 (B. & O. Act 3 of 1929), see the Bihar and Orissa Gazette, 1927, Part V,
p. 31; for Report of the Select Committee, see the Bihar and Orissa Gazette, 1928,
Part V, p. 15; and for proceedings in Council, see the Bihar and Orissa Legislative
Council Debates—
Vol. VV - 205

^[1] The Act has been materially modified by B. & O. Act 6 of 1920. For Statement of Objects and Reasons of the original Act, see Ualcutta Gazette, 1908, Part IV, p. 99; for Report of the Select Committee, see Calcutta Gazette, 1908, Part IV, Extraordinary, p. 3; for proceedings in Council, see Calcutta Gazette, 1908, Part IVA, pp. 207 and 252. For Statement of Objects and Reasons of the amending Act (B. & O. Act 6 of 1920), see Bihar and Orissa Gazette, 1920, Part V, p. 30; for Report of the Select Committee, see Bihar and Orissa Gazette Extraordinary, dated 5th March, 1920; for proceedings of the Legislative Council, see Bihar and Orissa Gazette, 1920, Part VI, pp. 60, 159 and 262. The amending Act came into operation with the exception of sections 33 and 38 in the district of Manhhum, and with the exception of sections 18, 33 and 38 in the other districts of the Chota Nagpur Division, on the 5th November 1920, the date appointed by notifications issued under section 1(2) of that Act as amended by section 2(2) of the Chota Nagpur Tenancy (Amendment) Amending Act, 1920 (B. & O. Act 7 of 1920). For notifications, see Bihar and Orissa Gazette, 1920, Part II, pp. 1287 and 1288. Sections 33 and 38 came into operation in the Chota

vol. XVI, pp. 167, 267 and 309.
Vol. XVII, pp. 167, 267 and 309.
Vol. XIX, p. 1469, and
Vol. XX, pp. 78, 79, 485, 540, 690 and 869.
This Amending Act was brought into force on the 1st March, 1930.
[2] See now the Government of India Act. [2] See now the Government of India Act.

(Secs. 2-3.)

- (2) It extends to the Chota Nagpur Division, except the district of Manbhum and except any area or part of an area which is constituted a municipality under the Bengal Municipal Act, 1884[1], [2][or Ben Act which is within a cantonment] and which is specified in this behalf 3 of 1884. by notification issued by the Local Government; and
- (3) The Local Government may, by notification, [3] extend the whole or any portion of this Act to the said district of Manbhum or to any part thereof.

Repeal.

- 2. (1) The Acts and notification specified in Schedule A are hereby repealed in the Chota Nagpur Division, except the district of Manbhum.
- (2) When this Act is extended to the district of Manbhum or any part thereof, the Acts specified in Schedule B shall be deemed to be repealed in that district or part, as the case may be; or, if only a portion of this Act is so extended, then so much of the said Acts as is inconsistent with that portion shall be deemed to be so repealed.

Definitions.

- 3. In this Act, unless there is anything repugnant in the subject or context,-
 - (i) "agricultural year" means the year prevailing in a local area for agricultural purposes, and such year shall be deemed to commence and terminate on such dates, respectively, as the Local Government may, by notification, [4] direct ;
 - (ii) "Bhugut bandha mortgage" means a transfer of the interest of a tenant in his tenancy, for the purpose of securing the payment of money advanced or to be advanced by way of loan, upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the tenancy during the period of the
 - (iii) "Board" means the Board of Revenue for [5] [Bihar and Orissal;

[1] See now the Bihar and Orissa Municipal Act, 1922 (B. & O. Act 7 of 1922), printed in Vol. III of this Code.

mortgage;

printed in Vol. III of this Code.

[2] The words "or which is within a cantonment" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), section 3, printed in Vol. III of this Code.

[3] The whole of the Act except sub-section (5) of section 46, the proviso to sub-section (1) of section 240, and sub-sections (2) and (7) of section 240 has been extended to the district of Manbhum; see Notification no. 1920-T. R., dated the 7th October 1910, in Calcutta Gazette of 1910, Part I, page 1396.

[4] For notifications under clause (i) of section 3, see Calcutta Gazette of, 1908, Part I, p. 1843; Calcutta Gazette of 1909, Part I, p. 854; and Calcutta Gazette of 1910, Part I, p. 1759.

[5] The words "Bihar and Orissa" were substituted for the word "Bengal" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B, & O. Act 6 of 1920), s. 2(1), printed in Vol. III of this Code.

(Sec. 3.)

B. and O. Act 4 of 1914. (iv) "Certificate Officer" means the Certificate Officer as defined in clause [1][(3)] of section [2][3] of the [3][Bihar and Orissa Public Demands Recovery Act, 1914];

(v) "civil jail" means the civil jail of the district, and includes any place appointed by the Local Government

for the confinement of prisoners under this Act;

(vi) "Commissioner" and "Judicial Commissioner" mean respectively the Commissioner and Judicial Commissioner of Chota Nagpur; and include any other person specially empowered[4] by the Local Government to discharge the functions of the Commissioner or Judical Commissioner, as the case may be, in any particular area;

(vii) "Deputy Collector" includes an Assistant Collector and any Sub-Deputy Collector who is specially empowered by the Local Government to discharge any of the functions

of a Deputy Collector under this Act;

(viii) "Deputy Commissioner," in any provision of this Act, includes—

(a) any Revenue-officer or Deputy Collector who is specially empowered by the Local Government to discharge any of the functions of a Deputy Commissioner under that provision; and

(b) any Deputy Collector to whom the Deputy Commissioner may, by general or special order, transfer any of his

functions under that provision;

(ix) "enhancement" and "enhanced" do not include an increase of rent in respect of land held by a raiyat in excess of the area for which rent has previously been paid by him, or in respect of the conversion of upland, whether within or without his holding, into korkar; but include any commutation of rent payable in money into rent payable wholly or partly in kind;

(x) "estate" means land included under one entry in any of the general registers of revenue-paying lands and revenue-free lands, prepared and maintained under the law for

[4] For a motification empowering the District Judge of Manbhum-Sambalpur under this classe, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI,

^[1] The figure "3" was substituted for the figure "2" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2 (5), printed in Vol. 11I of this Code.

[&]quot;Ill of this Code.

[2] The figure "3" was substituted for the figure "4" by ibid, s. 2(5).

[3] The words and figures "Bihar and Orissa Public Demands Recovery Act, 1914" were substituted for the words and figures "Public Demands Recovery Act, 1895" by ibid, s. 2(4). For the Bihar and Orissa Public Demands Recovery Act, 1914, see Vol. III of this Code.

(Sec. 3.)

the time being in force by the Deputy Commissioner, and includes Government khas mahals and revenue-free lands not entered in any register;

(xi) "forest-produce" includes the following, whether taken from a forest or not, that is to say:—

(a) wood, charcoal, caoutchouc, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers and myrabolams,

(b) trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned of trees,

- (c) plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants,
- (d) wild animals, and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and

(e) peat, surface-soil, rock and minerals (including iron-stone, coal, clay, sand and lime-stone[1][)] when taken by any person for his own use[2][*];

(xii) "holding" means a parcel or parcels of land held by a raiyat and forming the subject of a separate tenancy;

- (xiii) "korkar" means land, by whatever name locally known, such as bahbala, khandwat, jalsasan or ariat, which has been artificially levelled or embanked primarily for the cultivation of rice, and—
 - (a) which previously was jungle, waste or uncultivated, or was cultivated upland, or which, though previously cultivated, has become unfit for the cultivation of transplanted rice, and
 - (b) which has been prepared for cultivation by a cultivator (other than the landlord), or by his predecessor in interest (other than the landlord), with or without the consent of the landlord according as such consent is required or not by section 64;
- (xiv) "landlord" means a person immediately under whom a tenant holds, and includes the Government;
- (xv) "moveable property" includes standing crops;
- (xvi) "Mundari khunt-kattidari tenancy" means the interest of a Mundari khunt-kattidar;
- (xvii) "pay," "payable" and "payment," when used with reference to rent, include "deliver," "deliverable" and "delivery";

^[1] This bracket was substituted for a comma by the Chota Nagpur Tenancy (Amendment) Act, 1923 (B. & O. Act 5 of 1923), s. 3, printed in Vol. III of this Code.

[2] A bracket was omitted from after the word "use" by ibid.

(Sec. 3.)

- (xviii) "permanent tenure" means a tenure which is heritable and which is not held for a limited time;
- (xix) "prædial conditions" mean conditions or services appurtenant to the occupation of land, other than the rent; and include rakumats payable by tenants to landlords, and every mahtut, mangan and madad, and every other similar demand, howsoever denominated, and whether regularly recurrent or intermittent;
- (xx) "prescribed" means prescribed by the Local Government by rule made under this Act;
- (xxi) "proprietor" means a person owning, whether in trust or for his own benefit, an estate or a part of an estate;
- (xxii) "registered" means registered under any Act for the time being in force for the registration of documents;
- (xxiii) "rent" means whatever is lawfully payable in money or kind by a tenant to his landlord on account of the use or occupation of the land held by the tenant, and includes all dues (other than personal services) which are recoverable under any enactment for the time being in force as if they were rent;
- (xxiv) "resumable tenure" means a tenure which is held subject to the condition that it shall lapse to the estate of the grantor and be resumable by him or his successor in title—
 - (a) on failure of male heirs of the body of the original grantee in the male line, or
 - (b) on the happening of any definite contingency other than that referred to in sub-clause (a) of this clause;
 - (xxv) "Revenue-officer," in any provision of this Act, means any officer whom the Local Government may appoint to discharge any of the functions of a Revenue-officer under that provision;
- (xxvi) "tenant" means a person who holds land under another person and is, or but for a special contract would be, liable to pay rent for that land to that person;
- (xxvii) "tenure" means the interest of a tenure-holder, and includes an under-tenure, but does not include a Mundari khunt-kattidari tenancy;
 - (xxviii) "village" means,—
 - (a) in any local area in which a survey has been made and a record-of-rights prepared under any enactment for

(Sec. 4.)

- the time being in force, the area included within the same exterior boundary in the village map finally adopted in making such survey and record, as subsequently modified by the decision (if any) of a Court of competent jurisdiction, and
- (b) where a survey has not been made and a record-of-rights has not been prepared under any such enactment, such area as the Deputy Commissioner may, with the sanction of the Commissioner, by general or special order, declare to constitute a village:
- [1] Provided that when an order has been made under section 80 directing that a survey be made, and a record-of-rights prepared in respect of any local area, estate, tenure, or part thereof, the Local Government may by notification declare that in such local area, estate, tenure, or part thereof, 'village' shall mean the area which for the purposes of such survey and record-of-rights may be adopted by the Revenue-officer subject to the control of the Commissioner as the unit of survey and record;
- [2][(xxix) "village-headman" means the headman of a village, or of a group of villages, whether known as manki, or pradhan, or manjhi, or otherwise, or by an equivocal designation, such as thikadar or ijaradar;

Explanation.—In this definition "village" includes a portion of a village; and

(xxx) "Permanent Settlement" means the Permanent Settlement of Bengal, Bihar and Orissa made in the year 1793.

CHAPTER II.

CLASSES OF TENANTS.

Classes of tenants.

- 4. There shall be, for the purposes of this Act, the following classes of tenants, namely:—
 - (1) tenure-holders, including under-tenure-holders,
 - (2) raiyats, namely:—
 - (a) occupancy-raiyats, that is to say, raiyats having a right of occupancy in the land held by them,

^[1] This provise was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 4(1), printed in Vol. III of this Code.
[2] Clauses (xxix) and (xxx) were inserted by s. 4 (2), ibid.

Ben. Act 2

of 1869.

(Secs. 5-7.)

- (b) non-occupancy raivats, that is to say, raivats not having such a right of occupancy, and
- (c) raivats having khunt-katti rights;
- (3) under-raiyats, that is to say, tenants holding, whether immediately or mediately, under raiyats, and
- (4) Mundari khunt-kattidars.
- 5. "Tenure-holder" means primarily a person who has acquired Meaning of from the proprietor, or from another tenure-holder, a right to hold "tenure-holder" land for the purpose of collecting rents or bringing it under cultivation by establishing tenants on it; and includes—
 - (a) the successors in interest of persons who have acquired such a right, and
 - (b) the holders of tenures entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869[1];

but does not include a Mundari khunt-kattidar.

6. (1) "Raiyat" means primarily a person who has acquired a Meaning of right to hold land for the purpose of cultivating it by himself, or by "raiyat". members of his family, or by hired servants, or with the aid of partners; and includes the successors in interest of persons who have acquired such a right, but does not include a Mundari khunt-kattidar.

Explanation.—Where a tenant of land has the right to bring it under cultivation, he shall be deemed to have acquired a right to hold it for the purpose of cultivation, notwithstanding that he uses it for the purpose of gathering the produce of it or of grazing cattle on it.

- (2) A person shall not be deemed to be a raiyat unless he holds land either immediately under a proprietor or immediately under a tenure-holder or immediately under a Mundari khunt-kattidar.
- (3) In determining whether a tenant is a tenure-holder or a raiyat, the Court shall have regard to—
 - (a) local custom, and
 - (b) the purpose for which the right of tenancy was originally acquired.
- 7. (1) "Raiyat having khunt-katti rights" means a raiyat in Meaning of occupation of, or having any subsisting title to, land reclaimed from "raiyat jungle by the original founders of the village or their descendants in khunt-kattithe male line, when such raiyat is a member of the family which rights". founded the village or a descendant in the male line of any member of such family:

Provided that no raiyat shall be deemed to have khunt-katti rights in any land unless he and all his predecessors in title have held such land or obtained a title thereto by virtue of inheritance from the original founders of the village.

(Secs. 8-9A.)

(2) Nothing in this Act shall prejudicially affect the rights of any person who has lawfully acquired a title to a khunt-kattidari tenancy before the commencement of this Act.

Meaning of "Mundari khunt-kattidar ".

- 8. "Mundari khunt-kattidar" means a Mundari who has acquired a right to hold jungle land for the purpose of bringing suitable portions thereof under cultivation by himself or by male members of his family, and includes—
 - (a) the heirs male in the male line of any such Mundari, when they are in possession of such land or have any subsisting title thereto, and
 - (b) as regards any portions of such land which have remained continuously in the possession of any such Mundari and his descendants in the male line, such descendants.

CHAPTER III.

TENURE-HOLDERS.

Tenureholder when of rent.

9. No tenure-holder who holds his tenure (otherwise than under not liable to a terminable lease) at a fixed rent which has not been changed from enhancement the time of the Permanent Settlement shall be liable to any enhancement of such rent, anything in the Bengal Decennial Settlement

Regulation, 1793[1], section 51, or in any other law, to the contrary 8 of 1793.

notwithstanding.

Enhancement of rent of tenureholder or village headman.

- [2] [9A. (1) Where the rent of a tenure-holder or village headman is liable to enhancement during the continuance of his tenancy, such enhancement shall be made only by an order of the Deputy Commissioner passed upon an application made to him, or by an order of a Revenue-officer passed under Chapter XII or Chapter XV.
- (2) An enhancement, progressive or otherwise, may, subject to any valid contract between the parties, be ordered up to the limit of the customary rate payable by persons holding similar tenancies in the vicinity, or where no such customary rate exists, up to such limit as is fair and equitable. In determining what is a fair and equitable rent, regard shall be had to the origin and history of the tenancy.
- (3) When the rent of a tenure-holder or village headman has been enhanced, it shall not again be enhanced for a period of fifteen years except by an order of a Revenue-officer passed under Chapter XII or Chapter XV.
- (4) Nothing in this section shall apply to a temporary tenureholder, or to a tenure-holder the rent of whose tenure is subject to variation in accordance with principles expressed in the contract whereby the tenure was created.]

^[1] Printed in Vol. I of this Code. [2] This section was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 5, printed in Vol. III of this Code.

(Secs. 10-12.)

Ben. Act 2 of 1869.

10. No bhuinhar whose lands are entered in any register prepared Certain and confirmed under the Chota Nagpur Tenures Act, 1869,[1] shall be bhuinhars not liable liable to any enhancement of the rent of his tenure.

to enhance. ment of

11. (1) When any tenure or portion thereof is transferred by Registration succession, inheritance, sale, gift or exchange, the transferee or his of certain successor in title shall cause the transfer to be registered in the office tenures. of the landlord to whom the rent of the tenure or portion is payable.

- (2) The landlord shall, in the absence of sufficient reason to the contrary, allow the registration of all such transfers.
- (3) Whenever any such transfer is registered in the office of the landlord, he shall be entitled to levy a registration fee of the following amount, namely:-
 - (a) when rent is payable in respect of the tenure or portion—a fee of two per centum on the annual rent thereof: provided that no such fee shall be less than one rupee or more than one hundred rupees, and
 - (b) when rent is not payable in respect of the tenure or portion —a fee of two rupees.
- (4) If an application for the registration of any transfer of a tenure or portion thereof under sub-section (1) is not made within a period of one year from the date of the transfer, and if the registration fee authorized by sub-section (3) is not paid or tendered within that period, the transferee or his successor in title shall not be entitled to recover, at any time after the expiry of the said period, by suit or other proceeding, any rent which may have become due to him, as the owner of such tenure or portion, between the date of the transfer and the date of the application for registration.
 - (5) Nothing in this section shall--
 - (i) vaildate a transfer of any tenure or portion thereof which, by the terms upon which it is held, or by any law or local custom, is not transferable, or
 - (ii) affect the right of the landlord to resume a resumable
- 12. If any landlord refuses to allow the registration of any such Procedure on transfer as is mentioned in section 11, the transferee or his successor refusal of in title may make application to the Deputy Commissioner; and the allow regis-Deputy Commissioner shall thereupon, after causing notice to be served tration of on the landlord, make such inquiry as he considers necessary; and, if transfer of tenure. no sufficient grounds are shown for the refusal, shall pass an order declaring that the transfer shall be deemed to be registered.

(Secs. 13-15.)

Division of tenure or distribution of rent.

13. Notwithstanding anything contained in section 11 or section 12, a division of any tenure or portion thereof, or a distribution of the rent payable in respect of any tenure or portion thereof, shall not be binding on the landlord unless it is made with the express consent in writing of the landlord or of his agent if specially authorized in that behalf.

Annulment of incumbrances on resumption of resumable tenure.

- 14. (1) Upon the resumption of a resumable tenure, every lien, sub-tenancy, easement or other right or interest created, without the consent or permission of the grantor or his successor in interest, by the grantee or any of his successors, on the tenure, or in limitation of his own interest therein, shall be deemed to be annulled, except the following, namely:--
 - (a) any lease of land whereupon a dwelling-house, manufactory or other permanent building has been erected or a permanent garden, plantation, tank, canal, place of worship or burning or burying ground has been made, or wherein a mine has been sunk under lawful authority:
 - [1][(aa) any right of Government in any land within a cantonment:1
 - (b) any right of a raiyat or cultivator in his holding or land, as conferred by this Act or by any local custom or usage;
 - (c) any right to hold land occupied by a sacred grove;
 - (d) any Mundari khunt-kattidari tenancy;
 - [2] [(dd) any bhuinhari tenure, as defined in the Chota Nagpur Ben. Act 2 Tenures Act, 1869[8]]; and
 - (e) any right of a [4][village-headman] in his office or land.
- (2) Nothing in clause (a) of sub-section (1) shall confer on any grantee of a resumable tenure, or any of his successors, any right over minerals which he does not otherwise possess.

Saving of rights of landlord.

15. The mere registration of a transfer under section 11, or the mere receipt of a registration-fee thereunder, or the passing of an order by the Deputy Commissioner under section 12, shall not be deemed to imply a consent to, or permission to make, the transfer, within the meaning of section 14; and the landlord shall not be bound by the terms or conditions of any such transfer.

^[1] This clause was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 6(1), printed in Vol. III of this Code.

^[2] This clause was inserted by *ibid*, s. 6(2).
[3] Printed ante p. 105.
[4] The expression "village-headman" was substituted for the words "headman of a village or group of villages (whether known as a manki or pradhan or manjhi or otherwise)" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 6(3), printed in Vol. III of this Code.

(Secs. 16-17.)

CHAPTER IV.

OCCUPANCY-RATVATS

General.

16.[1][(1)] Every raivat who, immediately before the commence Continuance. ment of this Act, has, by the operation of any enactment, or by local of existing custom or usage or otherwise, a right of occupancy in any land, shall, rights. when this Act comes into force, have a right of occupancy in that land notwithstanding the fact that he may not have cultivated or held the land for a period of twelve years.

[2] [(2) The exclusion from the operation of this Act by a notification under sub-section (2) of section 1 of any area or part of an area, which is constituted a municipality under the provisions of the Bengal Municipal Act, 1884,[8] or which is within a cantonment, shall not affect any right, obligation or liability previously acquired, incurred or accrued in reference to such area.]

Ben. Act 3 of 1884.

> 17. (1) Every person who, for a period of twelve years, whether Definition of wholly or partly before or after the commencement of this Act, has "settled continuously held as a raivat land situate in any village, whether under raivat." a lease or otherwise, shall be deemed to have become, on the expiration of that period, a settled raivat of that village.

- (2) A person shall be deemed, for the purposes of this section, to have continuously held land in a village notwithstanding that the particular land held by him has been different at different times.
- (3) A person shall be deemed, for the purposes of this section, to have held as a raivat any land held as a raivat by a person whose heir he is.
- (4) Land held by two or more co-sharers as a raivati holding shall be deemed, for the purposes of this section, to have been held as a raivat by each such co-sharer.
- (5) A person shall continue to be a settled raivat of a village as long as he holds any land as a raiyat in that village and for three years thereafter.
- (6) If a raiyat recovers possession of land under section 71, or by suit, he shall be deemed to have continued to be a settled raivat notwithstanding his having been out of possession more than three
- (7) If, in any suit or proceeding, it is proved or admitted that a person holds any land as a raiyat, it shall, as between him and the

^[1] The figure and brackets "(1)" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 7(1), printed in Vol. III of this Code.

^[2] This sub-section was inserted by ibid, s. 7(2). [3] See 1st foot-note, page 810 supra.

(Secs. 18-20.)

landlord under whom he holds the land, be presumed, for the purposes of this section, until the contrary is proved or admitted, that he has for twelve years continuously held that land or some part of it as a raiyat.

Bhuinhars and Mundari khunt-kattidars to be settled raiyats in certain cases.

- 18. The following classes of persons shall be deemed to be settled raivats for the purposes of this Act, in regard to the land in their villages which they cultivate as raivats (other than their own Bhuinhari or Mundari khunt-kattidari land, and other than landlords' privileged lands as defined in section 118), and the provisions of sub-sections (3) to (6) of section 17 shall apply to such persons as if they were raiyats, namely:--
 - (a) where any land in a village, other than land known as manjhihas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869[1]—all members of any Bhuinhari family who Ben. Act 2 hold, and have for twelve years continuously held, land in such village, and

(b) where any village contains land not forming part of a Mundari khunt-kattidari tenancy and an entry of Mundari khunt-kattidari tenancies or of Mundari khunt-kattidars in such village has been made in any record-of-rights as finally published under this Act or under any law in force before the commencement of this Act—all male members of any Mundari khunt-kattidari family who hold, and have for twelve years continuously held, land in such village.

Settled raivats to have occupancy rights.

Effect of acquisition of occupancy-right by landlord.

19. Every person who is a settled raivat of a village within the meaning of section 17 or section 18 shall[2][subject to the provisions of section 43] have a right of occupancy in all land[3][***] for the time being held by him as a raivat in that village.

[4][20. (1) When the immediate landlord of an occupancy holding is a proprietor or permanent tenure-holder, and the entire interests of the landlord and the raivat in the holding become united in the same person by transfer, succession, or otherwise, such person shall hold the land as a proprietor or permanent tenure-holder, as the case may be, and shall not hold it by any subordinate right whatsoever, but nothing in this sub-section shall prejudicially affect the rights of any third person.

^[1] Printed ante, p. 105.
[2] The words and figures "subject to the provisions of section 43" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 8(1), printed in Vol. III of this Code.

^[3] The brackets, words and figures "(other than landlords' privileged lands as defined in section 118)" were omitted by *ibid*, s. 8(2).

^[4] This section was substituted for the original section 20, by ibid, s. 9.

(Sec. 20.)

(2) If the occupancy-right in land is transferred to a person jointly interested in the land as proprietor or permanent tenure-holder such person shall hold the land as proprietor or permanent tenure-holder, as the case may be, and shall not hold it by any subordinate right whatsoever. Such transferee shall pay to his co-sharers a fair and equitable sum for the use and occupation of the land, and if he sub-lets the land to a third person, such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect thereof.

Illustration.—A, a co-sharer landlord, purchases the occupancy holding of a raiyat X. A sub-lets the land to Y who takes it for the purpose of establishing tenants on it; Y becomes a tenure-holder in respect of the land. Or, A sub-lets it to Z, who takes it for the purpose of cultivating it himself; Z becomes a raiyat in respect of the land.

In determining from time to time what is a fair and equitable sum under this sub-section, regard shall be had to the rent payable by the occupancy-raiyat at the time of the transfer, and to the principles of this Act regulating the enhancement or reduction of the rents of occupancy-raiyats.

- (3) A person interested in any estate, tenure, village or land, whether solely or jointly with others, as a temporary tenure-holder, ijaradar, or farmer of rents, or as a mortgagee in possession, shall not, during the period of his lease or mortgage, acquire by purchase or otherwise a right to hold any land comprised in his lease or mortgage in any other capacity than as such lessee or mortgagee, and every interest acquired by him in such land during the period of his lease or mortgage, shall upon the termination of such lease or mortgage, cease to exist: provided that if he has settled the land with a third person as a tenure-holder or a raiyat, not being prohibited from so doing by the terms of his lease or mortgage, the rights of such third person shall not be affected by the mere termination of the lease, but such third person shall be deemed to be a tenure-holder or a raiyat, as the case may be, in respect of that land.
- (4) This section does not prohibit and shall be deemed never to have prohibited the acquisition of a right of occupancy in a parcel of land—
 - (a) by a village-headman if by local custom or usage he has a right to acquire a right of occupancy in land of the class to which that parcel belongs, or
 - (b) by a temporary tenure-holder who, before becoming such, was himself a resident cultivator of the village, if such parcel has been converted by him into korkar or has been acquired by him by succession or inheritance.

Explanation.—A person having a right of occupancy in land does not lose it by subsequently becoming jointly interested in the land as a proprietor or permanent tenure-holder, or by subsequently holding the land in ijara or farm, or as a temporary tenure-holder or mortgagee].

(Secs. 21-23A.)

Incidents of occupancy-right.

Rights of occupancyraiyat in respect of use of land.

- 21. When a raiyat has a right of occupancy in respect of any land, he may use the land—
 - (a) in any manner which is authorized by local custom or usage, or
 - (b) irrespective of any local custom or usage, in any manner which does not materially impair the value of the land or render it unfit for the purposes of the tenancy.

Protection of occupancyraiyat from eviction except on specified grounds.

- Protection of his holding, except in execution of a decree for ejectment passed on the ground—
 - (a) that he has used the land comprised in his holding in a manner which is not authorized by section 21, or
 - (b) that he has broken a condition, consistent with the provisions of this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.

Devolution of occupancy right on death. 23. If a raivat dies intestate in respect of a right of occupancy, it shall, subject to any local custom to the contrary, descend in the same manner as other immovable property:

Provided that in any case in which, under the law of inheritance to which the raiyat is subject, his other property goes to the Crown, his right of occupancy shall be extinguished.

Registration of certain transfers of occupancyholdings.

- [1][23A. (1) When an occupancy-holding or any portion thereof is transferred in any way authorized by law, by succession, inheritance or sale, the transferre or his successor in title may cause the transfer to be registered in the office of the landlord to whom the rent of the holding or portion thereof, as the case may be, is payable.
- (2) The landlord shall, in the absence of sufficient reason to the contrary, allow the registration of all such transfers, and shall not be entitled to levy any registration fee.
- (3) If any landlord refuses to allow the registration of any such transfer as is mentioned in sub-section (1), the transferee or his successor in title may make an application to the Deputy Commissioner, and the Deputy Commissioner shall thereupon, after causing notice to be served on the landlord, make such inquiry as he considers necessary, and if no sufficient grounds are shown for the refusal, shall pass an order declaring that the transfer shall be deemed to be registered, and may also pass such order as hé thinks fit in respect of the costs of any such inquiry.]

^[1] This section was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 10, printed in Vol. III of this Code.

of 1879.

(Secs. 24-27.)

24. An occupancy-raiyat shall pay rent for his holding at a fair Obligation of and equitable rate.

Enhancement of Rent.

25. The rent for the time being payable by an occupancy-raiyat Presumption that rent of shall be presumed to be fair and equitable until the contrary is proved.

raivat to pay rent.

occupancyraiyat is fair and equitable.

26. When the rent of an occupancy-raiyat whose rent is liable to Confirmation of rents enhancement has been enhanced before the commencement of this Act, enhanced otherwise than under section 24 of the [1] Chota Nagpur Landlord and prior to commence-Tenant Procedure Act, [2][1879,] such enhanced rent shall be deemed ment of this to be lawfully payable—

- (a) if it has been actually paid continuously for seven years before the commencement of this Act; and
- (b) if it is not proved to be unfair and inequitable:

Provided that, where the rent lawfully payable by an occupancy raiyat for his holding has been made an issue in any suit for arrears of rent, and the Court has arrived at a finding on that issue, the rent so found shall be deemed to be lawfully payable by the raiyat for the holding.

27. (1) From and after the commencement of this Act,—

(a) in any area for which a record-of-rights has not been which rent of occuprepared and finally published under this Act or under any pancy raivat law in force before the commencement of this Act, or may be enhanced. for which an order has not been issued under this Act or under any law in force before the commencement of this Act for the preparation of such a record, the moneyrent of an occupancy-raiyat whose rent is liable to enhancement may be enhanced only by order of the Deputy Commissioner passed under section 29; and

Methods in

- (b) in any area for which a record-of-rights has been prepared and finally published as aforesaid, or for which an order has been issued as aforesaid for the preparation of such a record, the money-rent of an occupancy-raiyat whose rent is liable to enhancement may be enhanced only,-
 - (i) in cases referred to in section 62, section 94 or section 99, by order of the Deputy Commissioner passed under section 29, and
 - (ii) in other cases, by order of a Revenue-officer passed under Chapter XII.

^[1] Repealed by this Act, see s. 2 and Schedule A.
[2] The figures "1879" were inserted by the Chota Nagpur Tenancy (Amendment)
Act, 1920 (B. & O. Act 6 of 1920), s. 2(6), printed in Vol. III of this Code.

(Secs. 28-29.)

(2) No enhancement of such rent made after the commencement of this Act in any manner other than that referred to in clause (a) or clause (b), as the case may be, whether by private contract or otherwise, shall for any reason be recognized or given effect to in any suit or proceeding in any Court.

Contents of application to Deputy Commissioner for enhancement.

- 28. (1) Every application to the Deputy Commissioner for the enhancement of the rent of an occupancy holding shall specify:—
 - (a) such particulars as may be prescribed regarding the area, situation, local names, quality and boundaries of the parcels of land constituting the holding;
 - (b) the rates of rent (if any) payable by the raiyat for the different classes of land constituting the holding, and the yearly rent payable for the holding at the date of the application;
 - (c) the rates (if any) generally prevailing in the village for corresponding classes of land;
 - (d) the date (as nearly as it can be ascertained) when the rates of rent generally prevailing were last adjusted in the village;
 - (e) the rates which the applicant desires to claim; and
 - (f) the grounds on which the applicant considers that he is entitled to the enhancement claimed.
- (2) Sections 146 to 149 shall apply to every application made under this section.

Procedure on receipt of such application.

- 29. (1) When any such application has been received, the Deputy Commissioner—
 - (a) shall forthwith give notice of the contents thereof to the raiyat, and
 - (b) may, if he thinks fit, order a measurement of the land, and
 - (c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat, by order, fix such enhanced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable:

Provided that no enhancement shall be ordered except on one or more of the following grounds, namely,—

(i) that the rate of rent paid by the raiyat is below the prevailing rate paid by occupancy-raiyats for land of similar quality and with similar advantages [1][in the same village or in the neighbouring villages, and that there is no sufficient reason for his holding at so low a rate;]

^[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 11, printed in Vol. III of this Code.

(Secs. 30-31.)

- (ii) that there has been a rise in the average local prices of staple food-crops during the currency of the present rent;
- (iii) that the productive powers of the land held by the raivat have been increased by an improvement effected during the currency of the present rent, otherwise than by the agency or at the expense of the raivat:

Provided also that no enhancement shall be ordered which is, under the circumstances of the case, unfair or inequitable:

Provided, further, that all enhancements shall be limited in the prescribed manner (if any).

- (2) The rent as fixed or varied under sub-section (1) shall be payable by the said raiyat from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.
- (3) Nothing in this section shall bar the right of a raiyat to claim at any time under section 34 a reduction of the rent previously paid by him.
- 30. Where the Deputy Commissioner considers that the immediate Power to enforcement of the full enhancement ordered under section 29 is likely direct gradual to be attended with hardship, he may direct that the enhancement shall enhancebe gradual; that is to say, that the rent shall increase yearly by degrees, ment. for any number of years not exceeding five, until the limit of the full enhancement has been reached.

Increase of Rent in respect of Excess Area.

31. (1) Where land is held by an occupancy-raivat in excess Application of the area for which rent has previously been paid by him, no increase of rent in shall be made to the rent payable by him except by order of a Revenue-respect of officer passed under Chapter XII or by order of the Deputy Commissioner excess of the passed on an application made to him by the landlord.

area for which rent

(2) Every such application shall specify—

(a) the yearly rent payable by the raiyat at the date of the previously application;

(b) the area and description of the land for which the said rent is payable;

(c) the proceedings (if any) by which the said rent was fixed;

- (d) the general rate prevailing in the village for corresponding classes of lands:
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;
- (f) the area and description of the land held in excess of the area for which rent has previously been paid, and in respect of which an increase of rent is claimed; or, if the landlord is unable to indicate any particular land as being held in excess, then the area alone;

(Sec. 32.)

- (g) the amount of the said increase:
- (h) the manner in which the said increase has been, or should be, assessed; and
- (i) any other prescribed particulars.
- (3) If a survey and record-of-rights have been made under this Act, or under any other law in force before the commencement of this Act, in respect of any land referred to in clause (b) or clause (f) of sub-section (2), the "area and description" required by those clauses, respectively, shall be specified by stating the plot number, area and class of each field included in the land, as shown by such survey and record.
- (4) Sections 146 to 149 shall apply to every application made under this section.

Procedure on receipt of such application.

- 32. (1) When any such application has been received, the Deputy Commissioner—
 - (a) shall forthwith give notice of the contents thereof to the raiyat; and
 - (b) shall refer to the entry (if any) relating to the tenancy in the record-of-rights prepared under this Act or any other law for the time being in force; and
 - (c) may, if he thinks fit, order a measurement of the land held by the raiyat; and
 - (d) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the raiyat and making such further inquiry as the Deputy Commissioner may think necessary, order such an increase, whether progressive or otherwise, as he may consider to be fair and reasonable:

Provided that, if the landlord proves that, at the time when the measurement on which the claim is based was made, there existed, in the estate or tenure or part thereof in which the holding is situate, a practice of measuring land before settling rents, the Deputy Commissioner may presume that the area of the holding as entered in any lease or counterpart engagement or (where there is an entry of area in a counterfoil receipt corresponding to the entry in the rent-roll) in the rent-roll relating to the holding was so entered after measurement:

Provided also that an increase of rent shall not be ordered where it would contravene any local custom or usage prohibiting an increase of rent in respect of the increase in area of a holding.

(2) When any increase has been so ordered, it shall be payable from the commencement of the agricultural year following that in which the order is passed, and may be recovered from the raiyat in any suit instituted against him for arrears of rent.

(Secs. 33-35.)

- 33. Nothing in sections 31 and 32 shall prohibit a landlord from Savings. realizing—
 - (a) increased rents from a raiyat for separate parcels of land settled with him in any manner authorized by law, or
 - (b) rents on land converted from upland into korkar in accordance with local custom or usage.

Reduction of Rent.

34. (1) Any occupancy-raivat wishing to claim a reduction of the Application rent previously paid by him may present an application to the Deputy Commis-Commissioner to assess the rent on the land in respect of which such reduction is sought, and (if necessary) to measure the land.

(2) Every such application shall specify—

- (a) the yearly rent payable by the raiyat at the date of the application;
- (b) the area and description of the land for which the said rent is payable;
- (c) the proceedings (if any) by which the said rent was fixed;
- (d) the general rate prevailing in the village for corresponding classes of lands;
- (e) the date (as nearly as it can be ascertained) when the said general rate was last adjusted in the village;
- (f) the amount of reduction claimed;
- (g) the grounds on which such reduction is claimed; and
- (h) any other prescribed particulars.
- (3) Sections 146 to 149 shall apply to every application made under this section.
- 35. (1) When any such application has been received, the Deputy Procedure on receipt of such
 - (a) shall forthwith give notice of the contents thereof to the application. landlord; and
 - (b) may, if he thinks fit, order a measurement of the land; and
 - (c) may, upon consideration of all the circumstances set forth in the application, and after hearing any objection advanced by the landlord, by order, fix such reduced rent, or otherwise vary the rent for the said land, as to him may seem fair and reasonable:

Provided that no reduction shall be ordered except on one or more of the following grounds, namely,—

[1][(i) that there has been a decrease, not due to a temporary cause or to the fault of the raiyat, in the productive powers

^[1] This clause was substituted for the original clause (i) of the proviso by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 12, printed in Vol. III of this Code.

(Secs. 36-37.)

of the land held by the raiyat by reason of a deposit of sand, failure or deterioration of irrigation facilities, or other specific cause, sudden or gradual;]

(ii) that there has been a fall, not due to a temporary cause, in the average local prices of staple food-crops during the currency of the present rent;

(iii) that the land held by the raivat is of less area than the area for which rent has previously been paid by him.

(2) The rent as so fixed or varied shall be payable by the raiyat from the commencement of the agricultural year following the year in which the order is passed, and may be recovered in any suit instituted against him for arrears of rent.

(3) Nothing in this section shall bar the right of the landlord to claim at any time an enhancement under section 29 of the rent of

such raiyat.

Bar to further enhancement or reduction of rent.

Bar to **36.** (1) When the rent of an occupancy holding in any area referred further to in clause (a) of section 27 has been enhanced by order of the Deputy enhancement or Commissioner passed under section 29, such rent shall not again be reduction enhanced for a period of fifteen years, except of rent where there

(a) by order of the Deputy Commissioner, on the ground of a

landlord's improvement; or

(b) by order of a Revenue-officer passed under Chapter XII.

- (2) When the rent of an occupancy holding in any such area has been reduced by order of the Deputy Commissioner under section 34, otherwise than on the ground specified in proviso (iii) to section 35, such rent shall not again be reduced for a period of fifteen years, except-
 - (i) by order of the Deputy Commissioner, on one of the grounds specified in provisos (i) and (iii) to section 35, or

(ii) by order of a Revenue-officer passed under Chapter XII.

CHAPTER V.

RAIYATS HAVING KHUNT-KATTI RIGHTS.

Incidents of tenancy of raiyat having khunt-kattirights.

is no record-

of-rights.

37. The provisions of this Act relating to occupancy-raiyats shall apply also to raivats having khunt-katti rights:

Provided as follows:-

(a) subject to any written contract made at the time of the commencement of his tenancy, the rent payable by a raiyat having khunt-katti rights, for land in respect of which he has such rights, shall not be enhanced if his

(Secs. 38-41.)

tenancy of such land was created more than twenty years before the commencement of this Act: and

(b) when an order is made for the enhancement of the rent payable, by a raiyat having khunt-katti rights, for any land in respect of which he has such rights, the enhanced rent fixed by such order shall not exceed one-half of the rent payable by an occupancy-raivat for land of a similar description and with similar advantages in the same village.

CHAPTER VI.

Non-occupancy-raiyats.

38. Subject to any local custom or usage, a non-occupancy raivat Initial rent shall, when admitted to the occupation of land, become liable to pay and lease of non-occusuch rent as may be agreed on between himself and his landlord at pancy-raiyat. the time of his admission, and shall be entitled to a lease only at such rates and on such conditions as may be so agreed on.

39. The provisions of section 20 shall apply in the case of the Effect of right of a non-occupancy-raiyat in his holding, in the same way that acquisition by landlord they apply to an occupancy-right.

of a nonoccupancyraiyat in his holding.

40. The rent of a non-occupancy-raiyat shall not be enhanced, Conditions except by registered agreement or by agreement under section 42.

of enhancement of rent of non-occupancy-raiyat.

41. A non-occupancy-raiyat shall, subject to the provisions of Grounds on this Act, be liable to ejectment on one or more of the following grounds, occupancyand not otherwise, namely:-

which nonraiyat may be ejected.

- (a) on the ground that he has failed to pay an arrear of rent:
- (b) on the ground that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage, or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy;
- (c) on the ground that he has broken a condition, consistent with this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected.;
- (d) where he has been admitted to occupation of the land under a registered lease, on the ground that the term of the lease has expired;

(Sec. 42.)

(e) on the ground that he has refused to agree to pay a fair and equitable rent determined under section 42, or that the term for which he is entitled to hold at such a rent has expired.

Conditions of ejectment on ground of refusal to agree to pay a fair and equitable rent.

- 42. (1) A suit for ejectment on the ground of refusal to agree to pay a fair and equitable rent shall not be instituted against a non-occupancy-raiyat, unless the landlord has tendered to the raiyat an agreement to pay the rent which he demands, and the raiyat has, within six months before the institution of the suit, refused to execute the agreement.
- (2) A landlord desiring to tender an agreement to a raiyat under this section, may either—
 - (a) file it in the office of the Deputy Commissioner, for service on the raiyat; or
 - (b) send it to the raiyat direct, either by registered post or by any other means.
- (3) When an agreement has been filed under clause (4) of subsection (2), the Deputy Commissioner shall forthwith cause it to be served on the raiyat in the manner prescribed under section 264 for the service of notices.
- (4) When an agreement has been served on a raiyat under subsection (3), or when it is proved to the satisfaction of the Deputy Commissioner that an agreement has been sent to a raiyat by registered post, or, if sent to him by any other means referred to in clause (b) of sub-section (2), has duly reached him, the agreement shall, for the purposes of this section, be deemed to have been tendered.
- (5) If a raiyat on whom an agreement has been served under subsection (3), or to whom an agreement has been sent under sub-section (2), clause (b), executes it, and within one month from the date of receipt files it in the office of the Deputy Commissioner, it shall take effect from the commencement of the agricultural year next following.
- (6) When an agreement has been executed and filed by a raiyat under sub-section (5), the Deputy Commissioner shall forthwith cause a notice of its being so executed and filed to be served on the landlord.
- (7) If the raiyat does not execute the agreement and file it under sub-section (5), he shall be deemed, for the purposes of this section, to have refused to execute it.
- (8) If a raiyat refuses to execute an agreement tendered to him under this section, and the landlord thereupon institutes a suit to eject him, the Deputy Commissioner shall determine what rent is fair and equitable for the holding.
- (9) If the raiyat agrees to pay the rent so determined, he shall be entitled to remain in occupation of his holding at that rent for a

occupancy in, and to

privileged

lands and

lands.

(Sec. 43.)

term of five years from the date of the agreement, but on the expiration of that term shall be liable to ejectment on the second ground mentioned in clause (e) of section 41, unless he has acquired a right of occupancy.

(10) If the raivat does not agree to pay the rent so determined, the Deputy Commissioner shall pass a decree for ejectment.

(11) In determining what rent is fair and equitable, the Deputy Commissioner shall have regard to the rents generally paid by nonoccupancy-raiyats for land of a similar description and with like advantages in the same village and (if the Deputy Commissioner thinks fit) in adjoining villages.

CHAPTER VII.

LANDS EXEMPTED FROM CHAPTERS IV AND VI.

43. Notwithstanding anything contained in Chapter IV, a right Bar to of occupancy shall not be acquired in, nor shall anything contained in of right of Chapter VI [1] [or in sections 64 to 66] apply to-

(a) landlords' privileged lands referred to in clause (a) of sec-application tion 118, when they are held by a tenant on a registered of Chapter vi to, lease for a term [2] [exceeding one year or on a lease, landlords' written or oral, for a period of one year or less], or

(b) landlords' privileged lands referred to in clause (b) of sec-certain other tion 118, or

(c) land acquired under the Land Acquisition Act, 1894,[3] for the Government or any local authority or Railway Company, or land belonging to the Government within a cantonment, while such land remains the property of the Government or of any local authority or Railway Company, [4] or

(d) land belonging to the Government or to any local authority which is used for any public work, such as a road, canal or embankment, or is required for the repair or maintenance of the same, while such land continues to be so used or required.]

[1] The words and figures "or in sections 64 to 66" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 13(1)(a), printed

in Vol. III of this Code.
[2] These words were substituted for the words "of years or on a lease year by

year" by ibid, s. 13(1)(b).

[3] Printed in General Act, 1887-97, Ed. 1928, p. 216.

[4] The word "or" and clause (d) were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 13(2), printed in Vol. III of this Code.

1 of 1894.

(Secs. 48-49.)

1914, for the recovery of a loan granted for the benefit of the holding under the Land Improvement Loans Act, 19 of 1883. 1883,[1] or the Agriculturists' Loans Act, 1884,[2] or other- 12 of 1884. wise by the Local Government;

(c) nothing in this section shall affect the right to execute a decree for sale of a holding passed, or the terms or conditions of any contract registered, before the first day

of January, 1903; and

[3][(d)] the right of a raivat in his holding or any portion thereof may be sold, in execution of a decree of a competent court, in any case in which the Local Government has declared in rules made under sub-section (6) of section 46 that transfer of such right by sale may be made by such raiyat without restriction.

Explanation I.—Where a holding is held under joint landlords, and a decree has been passed for the share of the rent due to one or more, but not all, of them, proviso (a) does not authorize the sale of the holding in execution of such decree.

Explanation II.—Proviso (c) does not render valid any document which is otherwise illegal or invalid, or authorize a Court to take judicial cognizance of any such document.

Restrictions on transfer and sale of Bhuinhari tenures.

48. Where any land in a village, other than land known as manjhihas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869,[4] then-

Ben. Act 2 of 1869.

- (a) section 46 [except sub-section (2) thereof] and section 47 shall apply also to all members of any Bhuinhari family holding land in such village, and to the land so held, as if they were raiyats and holdings, respectively, with the substitution of "the first day of October, 1908" for "the first day of January, 1903;" and
- (b) if any member of any such family transfers the land so held, or any part thereof, by lease, the lessee shall not acquire a right of occupancy therein.

Transfer of occupancyholding or Bhuinhari tenure for certain purposes.

49. (1) Notwithstanding anything contained in sections 46, 47 and 48, any occupancy-raiyat, or any member of a Bhuinhari family who is referred to in section 48, may, without the consent of the landlord, transfer his holding or tenure or any part thereof for any reasonable and sufficient purpose having relation to the good of the holding or tenure, or of the tenure or estate in which it is comprised.

 ^[1] Printed in General Acts, 1873-86, Ed. 1928, p. 438.
 [2] Ibid p. 452.

^[8] This proviso was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 15, printed in Vol. III of this Code. [4] Printed ante p. 105.

(Sec. 50.)

- (2) The expression "reasonable and sufficient purpose," as used in sub-section (1), includes—
 - (a) in the case of a member of a Bhuinhari family, but not in the case of an occupancy-raivat, building purposes generally, [1][* *]
 - (b) in any case, the use of the land for any charitable, religious or educational purpose, or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose, [2][and]
 - $\lceil 3 \rceil \lceil (c) \rceil$ in any case, the use of the land for the purpose of mining or for any other purpose which the Local Government may by notification declare to be subsidiary thereto or for access to land used or required for any such purpose.
 - (3) Every such transfer must be made by registered deed, and, before the deed is registered and the land transferred, the written consent of the Deputy Commissioner must be obtained to the terms of the deed and to the transfer.
 - (4) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that [4] [adequate compensation is tendered to the landlord for the loss (if any) caused to him by the transfer, and, where only part of a holding or tenure is transferred, may, if he thinks fit, apportion between the transferee and the original tenant the rent payable for the holding or tenure.
 - [5] [(5) Nothing in this section shall apply to the transfer by an occupancy-raiyat of his right in his holding or any portion thereof, if the Local Government has declared in rules made under sub-section (6) of section 46 that such transfer may be validly made.]

[6] [50. (1) Notwithstanding anything contained in sections 46 and Acquisition 47, the Deputy Commissioner may,—

(a) on the application of the landlord of a holding and on being landlord for satisfied that he is desirous of acquiring the holding or any certain part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the tenure or estate in which it is comprised, such as the use of the

of tenure of holding by

^[1] The word "and" was omitted by the Chota Nagpur Tenancy (Amendment)

Act, 1929 (B. & O. 'Act 3 of 1929), s. 2(i), printed in Vol. III of this Code.

[2] The word "and" was added by ibid, s. 2(ii).

[3] This clause was inserted by ibid, s. 2(iii).

[4] These words were substituted for the words "the landlord is adequately compensated for the transfer," by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 16(1), printed in Vol. III of this Code.

[5] This sub-section was inserted by ibid, s. 16(2).

[6] This section was substituted for the original section 50 by the Chota Nagpur Tenancy (Amendment) Act, 1929 (B. & O. Act 3 of 1929), s. 3, printed in Vol. III of this Code.

of this Code.

(Sec. 50.)

land for any charitable, religious or educational purpose, or for the purpose of manufacture or irrigation, or as building ground for any such purpose or for access to land used or required for any such purpose, and after such inquiry as the Deputy Commissioner may think necessary, authorize the acquisition thereof by the landlord upon such conditions as the Deputy Commissioner may think fit, and require the tenant to sell his interest in the holding or part to the landlord upon such terms as may be approved by the Deputy Commissioner, including compensation to the tenant;

- (b) on the application of the landlord of a tenure or holding and on being satisfied that he is desirous of acquiring any land within the said tenure or holding for the purpose of mining or for any other purpose which the Local Government may by notification declare to be subsidiary thereto or for access to land used or required for such purpose, and after such inquiry as the Deputy Commissioner may think necessary, authorize the acquisition by the landlord of such land or part thereof upon such conditions as the Deputy Commissioner may think fit, and require all persons holding interests directly or indirectly subordinate to him in the land to sell their interests to the said landlord upon payment to every such holder of such compensation as the Deputy Commissioner may determine.
- (2) (a) In determining the compensation to be paid under this section the Deputy Commissioner shall take into consideration the matters specified in clauses first to fifthly of section 23 of the Land Acquisition Act, 1894, [1] and the damage, if any, resulting from diminution of the 1 of 1894. profits of the land between the time of the publication of the notice under sub-section (3) and the time when the person making the application under clause (a) or clause (b) of sub-section (1) makes tender of compensation under sub-section (5).
- (b) The Deputy Commissioner shall not take into consideration any of the matters specified in clauses first to sixthly of section 24 of the Land Acquisition Act, 1894,[1] nor any outlay or improvements on, or I of 1894. disposal of, the land acquired, commenced, made or effected after the date of the publication of the notice under sub-section (3).
- (c) The Deputy Commissioner shall, in addition to the market-value of the land ascertained in accordance with the provisions of clause (a) of this sub-section, award to the holder of any interest acquired under

(Sec. 51.)

this section a sum of 20 per centum on such market-value in consideration of the compulsory nature of the acquisition.

(3) The Deputy Commissioner shall, before holding the inquiry mentioned in clause (a) or clause (b) of sub-section (1), give notice in the prescribed manner of the application for acquisition under this section and of his intention to hold such inquiry, to all persons known or believed to be interested in any land proposed to be acquired, and shall receive and decide any objection to the proposed acquisition which may be made by any person:

Provided that if any person, being the owner or lessee of the minerals lying under the land proposed for acquisition or under any part thereof, shall so object to the Deputy Commissioner, such land or part thereof, as the case may be, shall not be acquired under clause (b) of sub-section (1):

Provided also that if the landlord applies for the acquisition of a part of a holding, whether such part includes the homestead land of the raiyat or not, the Deputy Commissioner shall, if the raiyat does not wish to retain the remainder of the holding, reject the application for acquisition, unless the landlord is willing to acquire the entire holding.

- (4) On the acquisition under this section of a part of any tenure or holding the Deputy Commissioner may order such reduction of rent as may be fair and equitable.
- (5) If the landlord making an application under clause (a) or clause (b) of sub-section (1) tenders to any person whose holding or interest or part thereof is being acquired, such sum as the Deputy Commissioner has determined as compensation under sub-section (2) and such person refuses the same, the Deputy Commissioner may, on the landlord depositing the said sum with the Deputy Commissioner, give possession of such holding or interest to the landlord in the prescribed manner.
- (6) Any person interested who has not accepted the award under this section may, by written application presented to the Deputy Commissioner within six weeks of the date of the award, require that the matter be referred to the principal Civil Court of original jurisdiction for determination in accordance with the procedure prescribed in Part III of the Land Acquisition Act, 1894.[1]
- (7) Nothing herein contained shall enable the Deputy Commissioner to authorize the acquisition of any part of a holding whereon a temple, mosque or other place of worship, sacred grove, burial or burning ground exists.
- 51. (1) A tenant shall not, when his landlord's interest Tenant not is transferred, be liable to the transferee for rent which became due after transferee of the transfer and was paid in good faith to the landlord whose interest landlord's interest for

Tenant not liable to transferee of landlord's interest for rent paid to former landlord, without notice of the transfer.

1 of 1894.

(Sec. 51A.)

was so transferred, unless the transferee has before the payment served notice of the transfer on the tenant.

(2) Where there is more than one tenant paying rent to the landlord whose interest is transferred, a general notice from the transferree to the tenants, published in the prescribed manner, shall be a sufficient notice for the purposes of this section.

CHAPTER IX.

GENERAL PROVISIONS AS TO RENT.

[1][Presumptions as to fixily of rent.]

Presumptions as to fixity of rent.

- [51A. (1) Where a tenure-holder, village-headman or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed from the time of the Permanent Settlement, the rent or rate of rent shall not be liable to be increased except on the ground of an alteration in the area of the tenancy.
- (2) If it is proved in any suit, application or proceeding under this Act that either a tenure-holder, village-headman or raiyat and his predecessors in interest have held at a rent or rate of rent which has not been changed during the twenty years immediately before the institution of the suit, application or proceeding, it shall be presumed, until the contrary is shown, that they have held at that rent or rate of rent from the time of the Permanent Settlement:

Provided that if it is required by or under any enactment that in any local area tenancies, or any classes of tenancies, at fixed rents or rates of rent shall be registered as such on, or before, a date specified by or under the enactment, the foregoing presumption shall not after that date apply to any tenancy or, as the case may be, to any tenancy of that class in that local area unless the tenancy has been so registered.

- (3) The operation of this section, so far as it relates to land held by a raiyat, shall not be affected by the fact of the land having been separated from other land which formed with it a single holding, or amalgamated with other land into one holding.
- (4) Nothing in this section shall apply to a tenure held for a term of years or determinable at the will of the landlord.
- (5) When the particulars mentioned in section 81, clauses (b) and (k), have been recorded in respect of any tenancy under Chapter XII or, prior to the commencement of this Act, under the provisions of the Bengal Tenancy Act, 1885[2], as for the time being in force in the area in which 8 of 1885.

^[1] The sub-heading "Presumptions as to fixity of rent" and section 51A were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 18, printed in Vol. III of this Code.

[2] Printed in Vol. I of this Code.

(Secs. 52-54.)

the tenancy is situate, the presumption under this section shall not thereafter apply to that tenancy.]

Payment of Rent.

- 52. Subject to any registered agreement or local custom or usage to Instalments. the contrary, a money-rent payable by a tenant shall be payable in four equal instalments falling due on the last day of each quarter of the agricultural year.
- 53. Payment of rent by a tenant to his landlord in respect of the Methods of land held or cultivated by the tenant may be made eitherpayment of
 - (a) by tendering the rent at the mal-cutcherry for the receipt of rents or other place where the rent of such land is usually payable, or
 - (b) by remitting the amount of the rent to the landlord or his agent by postal money-order in the prescribed form.
- 54. (1) Every tenant who makes a payment on account of rent, or Receipts for interest due thereon, or both, to his landlord shall be entitled to obtain interest forthwith from the landlord or his agent, free of charge, a signed receipt thereon. for the same, in the prescribed form.

- (2) The landlord or his agent shall prepare and retain a counterfoil, in the prescribed form, of the receipt.
- (3) If any landlord or his agent, without reasonable cause, fails to grant such a receipt or to prepare and retain such a counterfoil, then, on proof thereof, the Deputy Commissioner may, in a summary proceeding, by order, impose on the landlord a fine which may extend to fifty rupees in respect of each such failure; and may, in his discretion, award to the tenant, by way of compensation, such portion of the fine as the Deputy Commissioner may think fit.
- (4) If, in any suit or other proceeding under this Act or any other law, the Court or presiding officer (not being the Deputy Commissioner) finds that any landlord or agent has failed—
 - (a) to deliver to a tenant a receipt in the prescribed form, or
 - (b) to prepare and retain a counterfoil, in the prescribed form, of a receipt delivered to a tenant as aforesaid,

such Court or officer shall inform the Deputy Commissioner.

(5) If, in any proceeding instituted under sub-section (3), the Deputy Commissioner discharges any landlord, and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted is false or vexatious, the Deputy Commissioner may, in his discretion, by his order of discharge, direct the tenant to pay to the landlord such compensation, not exceeding fifty rupees as the Deputy Commissioner may think fit.

(Secs. 55-56.)

Deposit of rent in Court of Deputy Commissioner.

- 55. In any of the following cases, namely,-
 - (a) when a tenant tenders or remits money on account of rent, and the landlord or his agent refuses to receive it or refuses to grant a receipt for it; or
 - (b) when a tenant who is bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the landlord or his agent will not be willing to receive it and to grant him a receipt for it; or
 - (c) when the rent is payable to co-sharers jointly, and the tenant is unable to obtain the joint receipt of the co-sharers for the money, and no person has been empowered to receive the rent on their behalf; or
 - (d) when the tenant entertains a bona fide doubt as to who is entitled to receive the rent.

the tenant, whether a suit has been instituted against him or not, may deposit, to the credit of the landlord, the full amount which he considers to be due from him, in the Court of the Deputy Commissioner having jurisdiction to entertain a suit or application for such rent;

and such deposit shall, as far as the tenant and all persons claiming through or under him are concerned, in all respects operate as, and have the full effect of, a payment then made by the tenant of the amount deposited to the credit of the landlord.

Procedure on 56. (1) On the written application of the tenant or his agent, and receipt of deposit, and on his making a declaration in the prescribed form, the Deputy payment of Commissioner shall receive such deposit and give a receipt for the sum deposited.

- (2) The Deputy Commissioner shall, as soon as possible after the receipt of any money so deposited, issue a notice, in the prescribed form, to the landlord to whose credit it has been deposited.
- (3) If any person claiming to be entitled to receive the money in deposit appears and applies for payment thereof to him, the Deputy Commissioner may pay the amount to him if he appears to be entitled to the same, or may, if the Deputy Commissioner thinks fit, retain the amount pending a decision by a Civil Court declaring what person is so entitled.
- (4) Any sum deposited as aforesaid may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor—
 - (a) at the discretion of the Deputy Commissioner, and after serving notice on the landlord and giving him an opportunity to object, and for reasons to be recorded in writing, —at any time within a period of three years from the date on which the deposit was made, or

(Secs. 57-61.)

(b) upon the application of the depositor—at any time after the expiration of the said period.

57. Whenever any deposit has been received by the Deputy Limitation Commissioner, no suit shall be maintained, and no application for a of suit or application certificate under section 244 shall be entertained, against the person for rent due making the deposit, or his representatives, on account of any rent deposit. which accrued due prior to the date of the deposit, unless such suit be instituted or such application be made within six months from the date of the service of the notice issued under section 56 in respect of such deposit.

Arrears of Rent.

58. (1) Any instalment of rent which is not paid before sunset What to be on the day when the same is payable shall be deemed an arrear of arrear rent, and, shall be liable to simple interest not exceeding twelve and of rent; interest on a half per centum per annum:

arrears.

Provided that, where a tenant pays his rent in full within the agricultural year in which it accrues due, interest shall not exceed six and a quarter per centum on the yearly rent lawfully payable.

(2) Sub-section (1) shall not apply to dues which are recoverable

under the Cess Act, 1880, [1] as if they were rent. Ben. Act 9 of 1880.

59. When an arrear of rent is adjudged to be due from a tenure-Ejectment holder not having a permanent or transferable interest in the land, holder and the lease of such tenure-holder shall be liable to be cancelled and the cancellation tenure-holder shall be liable to ejectment:

Provided that no such cancellation or ejectment shall be made otherwise than in execution of a decree or order made under this Act.

60. The rent of a tenancy shall be a first charge on the tenancy: Arrear of Provided that, if a tenancy is sold in execution of a decree for first charge arrears of rent, the purchaser shall acquire the tenancy free of all on tenancy. liability for rent for any period prior to the date of the sale, and rent due for any such period shall be a first charge on the sale-proceeds of the tenancy.

Commutation of rent payable in kind. 61. (1) When any tenure-holder or occupancy-raiyat pays for Commutation of rent a tenure or holding rent in kind, or on the estimated value of a portion payable in of the crop, or at rates varying with the crop, or partly in one of kind. those ways and partly in another, or partly in any of those ways and partly in money, then the rent so payable shall not be altered, whether by private contract or otherwise, except on the application of either the tenant or his landlord to have the rent commuted to a money-rest.

(2) Such application may be made to the Deputy Commissioner

or a Revenue-officer. [1] Printed ante, p. 369. arrears.

(Sec. 62.)

- (3) When any such application is made, the Deputy Commissioner or Revenue-officer may, after such inquiry as he thinks fit to make, determine the sum to be paid as money-rent, and may order that the tenant shall, in lieu of paying his rent in kind or otherwise as aforesaid, pay the sum so determined.
- (4) In making the determination, the said officer shall have regard to—
 - (a) the average money-rent payable by tenants for land of a similar description and with similar advantages in the vicinity;
 - (b) the average net value of the rent actually received by the landlord during the preceding ten years, or during any shorter period for which evidence may be available;
 - (c) the special circumstances (if any) which gave rise to the assessment of the rent payable by the tenant at the date of the application;
 - (d) the charges incurred by the landlord in respect of irrigation under the system of rent in kind, and the arrangements made on commutation for continuing those charges; and
 - (e) improvements effected by the landlord or the tenant in respect of the [1] [tenancy.]

and shall proceed in the prescribed manner.

- (5) The order shall be in writing, and shall state the grounds on which it is made and the time from which it is to take effect.
- (6) When any such order is made by a Deputy Commissioner, it shall be subject to appeal as provided in Chapter XVI.
- (7) When any such order is made by a Revenue-officer, an appeal shall lie in the prescribed manner and to the prescribed officer.
- (8) If the application is opposed, the officer shall consider whether, under all the circumstances of the case, it is reasonable to grant it and shall grant or refuse it accordingly. If he refuses it he shall record in writing the reasons for the refusal.
- 62. Where the rent of a tenure or holding has been commuted under section 61,—
 - (1) it shall not be increased for a period of fifteen years, except—
 - (a) by order of the Deputy Commissioner, on the ground of a landlord's improvement or an alteration in the area of the tenure or holding, or

Period for which commuted rents are to remain unaltered.

^[1] The word "tenancy" was substituted for the word "holding" by the Chota Nagpur. Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 19, printed in Vol. III of this Code.

Ben. Act 9

of 1880.

(Sec. 63.)

- (b) by order of a Revenue-officer passed under Chapter XII;
- (2) it shall not be reduced for a period of fifteen years, except—
 - (i) by order of the Deputy Commissioner, on one of the grounds specified in provisos (i) and (iii) to section 35,
- (ii) by order of a Revenue-officer passed under Chapter XII. [1] [Penalties for illegal exaction of prædial conditions or of anything in excess of rent or of local cess.

[2][63. (1) If any landlord or his agent levies, except under any Penalty on special enactment for the time being in force, any money or anything landlord for in kind from a tenant in excess of the rent lawfully payable, with interest anything in thereon, or enforces compliance by any tenant with any prædial condition excess of to which he is not lawfully entitled, the Deputy Commissioner of the rent district or any other officer who may be specially empowered by the local cess) Local Government in this behalf, may in summary proceeding by order or of lawful impose on the landlord or on his agent or on both as penalty such sum predial as such officer thinks fit, not exceeding two hundred rupees, or when double the amount or value of what is so levied exceeds two hundred rupees, not exceeding double that amount or value:

Provided that the aggregate of the sums imposed as penalty on the landlord and on his agent shall not exceed the maximum of two hundred rupees, or when double the amount or value of what is levied exceeds two hundred rupees, of double that amount or value. Such officer shall award to the tenant by way of compensation and costs such portion of the penalty as he thinks fit.

The Deputy Commissioner of the district or any other officer empowered as aforesaid may proceed against the landlord and his agent in the same proceeding or in separate proceedings.

- (2) Any levy of local cess from a tenant (not being a tenant holding on a permanent mukarrari lease from a proprietor or permanent tenureholder in a permanently-settled area),
 - (a) in excess of the net amount prescribed by clause (2) of section 41 of the Cess Act, 1880,[3] or

(b) on any scale in excess of that prescribed by clause (3) of that section.

shall be deemed to be a levy of money in excess of the rent lawfully payable within the meaning of sub-section (1),

[8] Printed ante, p. 389.

^[1] This sub-heading was substituted for the original sub-heading "Penalties for illegal exaction of rent or prædial conditions" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 20, printed in Vol. III of this Code.

[2] This section was substituted for the original section 63 by itid.

(Sec. 64.)

and all stipulations and reservations for payment of any such excess contained in any contract made between a landlord and a tenant on or after the 13th day of October, 1880, shall be void, unless such contract

- (i) was made between a temporary tenure-holder and his landlord before the first day of April, 1920, or
- (ii) relates to a tenancy situate in pargana Dhalbhum, the Estate of Porahat or the Kolhan Government Estate, in the district of Singhbhum, and was made prior to the first day of October, 1883, the first day of April, 1896, and the first day of September, 1917, respectively.
- (3) If in any suit, application or proceeding under this Act or any other law, the Court or presiding officer (not being the Deputy Commissioner) has grounds for believing that any landlord is liable to a penalty under this section, such Court or officer shall inform the Deputy Commissioner.
 - (4) A proceeding under sub-section (1) may be instituted—
 - (a) at any time, upon complaint made by a tenant or on his behalf;
 - (b) within three months of the receipt by the Deputy Commissioner of information under sub-section (3), or of the termination of any suit, application or proceeding under this Act or any other law, in the course of which the Deputy Commissioner has grounds for believing that the landlord is liable to a penalty under this section;
 - (c) in any other case, within one year of the levy in respect of which the landlord is liable to a penalty under this section.
- (5) If in any proceeding instituted under sub-section (1), the Deputy Commissioner discharges any landlord and is satisfied that the complaint or allegation of the tenant on which the proceedings were instituted, is false or vexatious, the Deputy Commissioner may, in his discretion, by his order of discharge, direct the tenant to pay to the landlord such compensation, not exceeding fifty rupees, as the Deputy Commissioner may think fit.]

CHAPTER X.

MISCELLANEOUS PROVISIONS AS TO LANDLORD AND TENANT.

Korkar.

Cases in which consent of landlord is required for conversion of land into korker.

- 64. (1) The oral or written consent of the landlord for the conversion of land into korkar shall be required in every case except—
 - (a) where the land was, before such conversion, included in the tenancy of a cultivator who has acquired a right of occupancy in it, or

Ben. Act 2 of 1869.

(Secs. 65-67.)

- (b) where, by the custom or usage of the village, tenure or estate, such consent is not necessary.
- (2) It shall be presumed, unless and until the contrary is proved, that the said consent is not required,—
 - (i) where any land in a village, other than land known as manjhihas or bethkheta, is entered in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869, [1]—by a member of a Bhuinhari family, or

(ii) where any land in a village is entered as a Mundari khuntkattidari tenancy, or any tenant of land in a village is entered as a Mundari khunt-kattidar, in any record-of-rights finally published under this Act or under any other law in force before the commencement of this Act,-by a member of a Mundari khunt-katti family,

who holds land in such village.

- (3) Where the consent of the landlord is required by this section for the conversion of land into korkar, such consent shall be deemed to have been given if, within two years from the date on which the cultivator commenced such conversion, the landlord has not made an application to the Deputy Commissioner for the ejectment of the cultivator [2][and no cultivator who is a tenant or resident of a village, shall be ejected from land of that village, which he has commenced to convert into korkar, otherwise than upon such an application.
- 65. When any such application is made, the Deputy Commissioner Power to may, after making such inquiry as he thinks fit,-

eject cultivator or

- (a) order the ejectment of the cultivator from the land so converted leave him into korkar, upon payment by the landlord of such reason-sion. able compensation (if any) as the Deputy Commissioner may direct, or
- (b) direct that the cultivator be left in undisturbed possession of the land.
- 66. Nothing in section 64 shall authorize any cultivator to convert Prohibition into korkar any orchard or cultivated or homestead land in the direct against conversion of possession of any other person.

certain land into korkar.

67. Every raiyat who cultivates or holds land which he or any Right of member of his family has converted into korkar shall have a right of occupancy in korkar. occupancy in such land, notwithstanding that he has not cultivated or held the land for a period of twelve years.

^[1] Printed ante, p. 105. [2] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 21, printed in Vol. III of this Code.

(Secs. 68-72.)

Eiectment.

Tenant not to be ejected except in execution of decree or order.

68. No tenant shall be ejected from his tenancy or any portion thereof except in execution of a decree, or in execution of an order of the Deputy Commissioner passed under this Act.

Relief feitures.

- 69. (1) Every decree for the ejectment of an occupancy-raiyat or against for a non-occupancy-raivat on the ground-
 - (a) that he has used the land comprised in his holding in a manner which is not authorized by local custom or usage or which materially impairs the value of the land or renders it unfit for the purposes of the tenancy; or

(b) that he has broken a condition, consistent with this Act, on breach of which he is, under the terms of a contract between himself and his landlord, liable to ejectment,

shall declare the amount of compensation which would reasonably be payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy; and shall fix a period during which it shall be open to the defendant to pay that amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same.

- (2) The Court may from time to time, for special reasons, extend a period fixed by it under sub-section (1).
- (3) If the defendant, within the period or extended period (as the case may be) fixed by the Court under this section, pays the compensation mentioned in the decree, and, where the misuse or breach is declared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed.

70. A decree or order for ejectment passed under this Act shall take effect from the end of the agricultural year in which it is passed, or at such earlier date (if any) as the Court may direct.

Decree or order for ejectment when to take effect. Power to replace in possession tenant unlawfully ejected.

71. If any tenant is ejected from his tenancy or any portion thereof in contravention of section 68, he may, within a period of one year (or, if he is an occupancy-raiyat, three years) from the date of such ejectment, present to the Deputy Commissioner an application praying to be replaced in possession of such tenancy or portion; and the Deputy Commissioner may, if he thinks fit, after making a summary inquiry, replace him in possession in the prescribed manner.

Surrender and Abandonment.

Surrender of land by raiyat.

72. (1) A raiyat not bound by a lease or other agreement for a fixed period may, at the end of any agricultural year, surrender his holding.

(2) But, notwithstanding the surrender, the raivat shall be liable to indemnify the landlord against any loss of the rent of the holding for (Sec. 73.)

the agricultural year next following the date of the surrender, unless he gives to his landlord, at least four months before he surrenders, notice of his intention to surrender.

- (3) The raiyat may, if he thinks fit, cause the notice to be served through the Court of the Deputy Commissioner within whose jurisdiction the holding or any portion of it is situate.
- (4) When a raivat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.
- (5) Nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for a surrender of the whole or a part of the holding.
- 73. (1) If a raivat voluntarily abandons the land held or cultivated Abandonby him, without notice to the landlord, and ceases either himself or ment of land by through any other person to cultivate the land and to pay his rent as raivat. it falls due, the landlord may, at any time after the expiration of the agricultural year in which the raivat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

- (2) Before a landlord enters under this section, he shall send a notice to the Deputy Commissioner, in the prescribed manner, stating that he has treated the holding as abandoned and is about to enter on it accordingly; and the Deputy Commissioner shall cause a notice of the fact to be published in the prescribed manner[1][and if an objection is preferred to him within one month of the date of publication of the notice, shall make a summary inquiry and shall decide whether the landlord is entitled under sub-section (1) to enter on the holding. The landlord shall not enter on the holding unless and until such objection has been decided in his favour, or if no objection is preferred, until the expiration of one month from the date of publication of the notice.]
- (3) When a landlord enters under this section, the raivat shall be entitled to apply to the Deputy Commissioner for the recovery of possession of the land at any time not later than the expiration of three years, in the case of an occupancy-raiyat, or, in the case of a non-occupancyraiyat, one year, from the date of the publication of the notice; and thereupon the Deputy Commissioner may, on being satisfied that the raiyat did not voluntarily abandon his holding, restore him to possession, in the prescribed manner, on such terms (if any) with respect to compensation to persons injured and payment of arrears of rent as to the Deputy Commissioner may seem just.

^[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 22, printed in Vol. III of this Code.

(Secs. 74-74A.)

Continuance of Occupation.

Effect of lease purporting to admit to occupation after occupation has commenced. Determination of person to be villageheadman when tenancy vacant.

- 74. When a tenure-holder, village-headman or raiyat has been in occupation of a tenure or holding, and a lease is executed with a view to the continuance of such occupation, he shall not be deemed to be admitted to occupation by that lease, notwithstanding that the lease may purport to admit him to occupation.
- [1][74A. (1) Where a tenancy which in accordance with custom is held by a village-headman, has for any reason been vacated, any three or more tenants holding land within the said tenancy, or the landlord, may apply to the Deputy Commissioner to determine the person who in accordance with custom should be village-headman entitled to hold the tenancy.
- (2) Such application may be made notwithstanding that a person is in possession of the land of the tenancy, or part thereof, under the authority or with the consent of the landlord.
- (3) On receiving such application the Deputy Commissioner shall, after giving notice in the prescribed manner to the landlord, the person, if any, referred to in sub-section (2), the heirs of the last village-headman, the tenants and such other persons, if any, as he considers should be parties to the proceeding, make such inquiry as appears necessary, and determine the person who in accordance with custom should be village-headman entitled to hold the tenancy, and shall place such person in possession of the tenancy, if such person is not already in possession thereof.
- (4) In every such inquiry the Deputy Commissioner shall have regard to the entries in a record-of-rights finally published under this Act or under any law in force before the commencement of this Act, and to the suitability of a person in respect of tribe or caste, membership of the village family or of the late village headman's family (if it be not the village-family), residence, character and other matters, to be the village-headman of the particular village or group of villages comprised in the tenancy.
- (5) No suit or application shall be entertained in any Court concerning any matter which is the subject of an application under sub-section (1), or which has been determined under sub-section (3), except a title suit in the Civil Court, instituted within one year from the date of the order passed by the Deputy Commissioner under sub-section (3), to establish the right of the plaintiff to succeed to the tenancy and to recover possession thereof from the person determined by the Deputy Commissioner to be the village-headman entitled to hold the tenancy.

^[1] This section was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (R. & O. Act 6 of 1920), s. 23, printed in Vol. III of this Code.

(Secs. 75-76.)

(6) No application shall be made under sub-section (1) concerning a matter which is substantially in issue, or has been substantially in issue and has been determined, in a suit instituted under the provisions of sub-section (6) of section 139.7

Measurements.

- 75. (1) Every landlord of an estate, tenure or Mundari khunt-katti-Measure-dari tenancy shall have a right to make a general survey or measurement ments of of the lands comprised in such estate, tenure or tenancy, unless lands, restrained from doing so by express engagement with the occupants of the lands.
- (2) If any landlord intending to measure any land which he has a right to measure is opposed in making such measurement by the occupant of the land,

or if any tenant, having received notice of the intended measurement of land held or cultivated by him, which is liable to such measurement, refuses to attend and point out such land, the landlord may present an application to the Deputy Commissioner.

- (3) On receipt of such application the Deputy Commissioner shall, after taking such evidence and making such inquiry as he considers necessary, pass an order either allowing or disallowing the measurement, and, if the case so requires, enjoining or excusing the attendance of any tenant.
- (4) If any tenant, after the issue of an order enjoining his attendance, refuses or neglects to attend, any map or other record of the boundaries and measurements of the land, prepared under the direction of the landlord at the time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown.

CHAPTER XI.

CUSTOM AND CONTRACT.

76. Nothing in this Act shall affect any custom, usage or customary Saving of right not inconsistent with, or not expressly or by necessary implication custom. modified or abolished by, its provisions.

Illustrations.

I. A custom or usage whereby a raiyat obtains a right of occupancy as soon as he is admitted to occupation of the tenancy, whether he is a settled raiyat of the village or not, is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

II. A custom or usage by which an under-raiyat can obtain rights similar to those of an occupancy-raiyat is, similarly, not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act, and will not

be affected by this Act.

(Secs. 77-79.)

III. A custom or usage whereby a raiyat is entitled to make improvements on his tenancy and to receive compensation therefor on ejectment is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

IV. A custom or usage whereby korkar is held—

(a) during preparation for cultivation, rent-free, or

(b) during or after preparation, at a rate of rent less than the rate payable for ordinary raivati land in the same village, tenure or estate,

is not inconsistent with, and is not expressly or by necessary implication modified or abolished by, the provisions of this Act. That custom or usage, accordingly, wherever it exists, will not be affected by this Act.

Saving as to service tenures and holdings.

77. Except in so far as the Local Government may otherwise direct by notification, nothing in this Act shall affect any incident of a ghatwali or other service tenure or holding.

Homesteads.

78. When a raivat holds his homestead otherwise than as part of his holding as a raiyat, the incidents of his tenancy of the homestead shall be regulated by local custom or usage, and, subject to local custom or usage, by the provisions of this Act applicable to land held by a raiyat.

Restrictions on exclusion of Act by agreement.

- 79. (1) Nothing in any contract between a landlord and a tenant made before or after the commencement of this Act shall—
 - (a) bar in perpetuity the acquisition of an occupancy-right in land, or
 - (b) take away an occupancy-right in existence at the date of the contract, or
 - (c) entitle a landlord to eject a tenant otherwise than in accordance with the provisions of this Act.
- (2) Nothing in any contract made between a landlord and a tenant between the 1st January, 1909, and the commencement of this Act shall prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land, not being landlords' privileged lands as defined in section 118.
- (3) Nothing in any contract made between a landlord and a tenant after the commencement of this Act, shall—
 - (i) prevent a raiyat from acquiring, in accordance with this Act, an occupancy-right in land, or
 - (ii) take away or limit the right of an occupancy-raiyat to use land as authorised by section 21, or
 - (iii) take away the right of an occupancy-raiyat to transfer his holding or any portion thereof subject to, and in accordance with, the provisions of this Act, or
 - (iv) take away the right of an occupancy-raivat to apply for a reduction of rent under section 34, ex
 - (v) affect the provisions of section 58 relating to interest payable on arrears of rent, or
 - (vi) take away the right of a tenant or landlord to apply for a commutation of rent under section 61, or

(Secs. 80-81.)

(vii) take away the right of a raivat to surrender his holding in accordance with section 72:

[1][Provided that when a landlord has converted waste land into korkar, and subsequently lets the same or a part thereof to a raiyat on registered lease, nothing in this Act shall affect a condition of such lease whereby the raivat is prevented from acquiring an occupancy right in the land or part during the period of twenty years from the date on which the landlord commenced to convert the land into korkar, if within the six months next preceding such commencement the landlord intimated to the Deputy Commissioner in manner prescribed his intention to convert the land into korkar, and satisfied him that it was then waste land.]

CHAPTER XII.

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS.

80. (1) The Local Government may make an order directing that Power to a survey be made and a record-of-rights be prepared, by a Revenue-officer, and preparain respect of the lands in any local area, estate, or tenure or part thereof. tion of

(2) A notification in the [2] [*] Gazette of an order under sub-section rights. (1) shall be conclusive evidence that the order has been duly made.

(3) The survey shall be made and the record-of-rights shall be prepared in the prescribed manner.

81. Where an order is made under section 80, the particulars to be Particulars recorded shall be specified in the order, and may include, either without to be recorded. or in addition to other particulars, some or all of the following, namely:-

- (a) the name of each tenant or occupant;
- (b) the class to which each tenant belongs, that is to say, whether he is a tenure-holder, Mundari khunt-kattidar, settled occupancy-raiyat, non-occupancy-raiyat, having khunt-katti rights, or under-raiyat, and, if he is a tenure-holder, whether he is a permanent tenure-holder or not, and whether his rent is liable to enhancement during the continuance of his tenure:
- (c) the situation and quantity and one or more of the boundaries of the land held by each tenant or occupier;
- (d) the name of each tenant's landlord;
- (e) the name of each proprietor in the local area or estate;
- (f) the rent payable at the time the record-of-rights is being prepared:
- (g) the mode in which that rent has been fixed—whether by contract, by order of a Court, or otherwise:

^[1] This proviso was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 24, printed in Vol. III of this Code.

[2] The word "Calcatta" was omitted by *ibid*, s. 2(2).

(Sec. 82.)

- (h) if the rent is a gradually increasing rent, the time at which, and the steps by which, it increases;
- (i) the rights and obligations of each tenant and landlord in respect of-
 - (i) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply, and
 - (ii) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant, whether or not such appliances be situated within the boundaries of such land.
- (k) the special conditions and incidents (if any) of the tenancy;
- (1) any easement attaching to the land for which the record-ofrights is being prepared;
- (m) if the land is claimed to be held rent-free—whether or not rent is actually paid, and, if not paid, whether or not the occupant is entitled to hold the land without payment of rent, and, if so entitled, under what authority;
- (n) [1] the existence, nature and extent of the right of any person, whether a landlord or tenant or not, to take forestproduce from jungle land or waste-land, or to graze cattle on any land, [2] [or to take fish from any water, or of any similar right] in any village in the area to which the record-of-rights applies;
- (o) the right of any resident of the village to reclaim jungle-land or waste-land, or to convert land into korkar.

Power to order survey and rights as to water.

82. The Local Government may, for the purpose of settling or averting disputes existing or likely to arise between landlords, tenants, preparation proprietors, or persons belonging to any of these classes, regarding the of record-of- use or passage of water,

> make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer, in order to ascertain and record the rights and obligations of each tenant and landlord in any local area, estate or tenure or part thereof, in respect of—

- (a) the use by tenants of water for agricultural purposes, whether obtained from a river, jhil, tank or well or any other source of supply; and
- (b) the repair and maintenance of appliances for securing a supply of water for the cultivation of the land held by each tenant.

^[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920, (B. & O. Act 6 of 1920), s. 25 (1), printed in Vol. III of this Code.
[2] These words were inserted by ibid, s. 25(2).

(Secs. 83-85.)

whether or not such appliances be situated within the boundaries of such land.

- 83. (1) When a draft record-of-rights has been prepared under this Preliminary Chapter, the Revenue-officer shall publish the draft in the prescribed amendment manner and for the prescribed period, and shall receive and consider any and final objections which may be made to any entry therein, or to any omission of recordtherefrom, during the period of publication.
- (2) When such objections have been considered and disposed of in the prescribed manner, the Revenue-officer shall finally frame the record, and shall cause it to be finally published in the prescribed manner; and the publication shall be conclusive evidence that the record has been duly made under this Chapter.
- (3) Separate draft or final records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.
- 84. (1) In any suit or other proceeding in which a record-of-rights Presumpprepared and published under this Chapter, or a duly certified copy tions as to final publicathereof or extract therefrom, is produced, such record-of-rights shall be tion and presumed to have been finally published, unless such publication is correctness of record-ofexpressly denied; and a certificate, signed by the Revenue-officer, or rights. by the Deputy Commissioner of any district in which the local area, estate or tenure or part thereof to which the record-of-rights relates is wholly or partly situate, stating that the record-of-rights has been finally published under this Chapter, shall be conclusive evidence of such publication.

(2) The Local Government may, by notification, declare, with regard to any specified area, that a record-of-rights has been finally published for every village included in that area; and such notification shall be conclusive evidence of such publication.

(3) Every entry in a record-of-rights so published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved, by evidence, to be incorrect.

- 85. (1) In every area in respect of which a survey is made and a Settlement record-of-rights is prepared under section 80, the Revenue-officer may of fair rents. settle fair rents in respect of any land held by a tenant.
 - (2) Settlements of rents may be made under sub-section (1) either—
 - (i) on the application of any landlord or tenant, or
 - (ii) without such application, if the Local Government so directs.

[1] [Explanation.—A superior landlord may apply for a settlement of rents notwithstanding that his estate or tenure or part thereof is held by a temporary lessee or by a tenant who holds on a rent which varies with the rent payable by the raivats under him.]

[1] This explanation was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 26(1), printed in Vol. III of this Code.

of record-of-

(Secs. 86-87.)

- (3) Such settlements shall ordinarily be made after the final publication of the record-of-rights, and shall not in any case be made on the application of a landlord or tenant after such final publication unless such application be made within [1][three] months from the date of the certificate of such final publication; but may in any case be made before such publication—
 - (a) with the consent of the parties concerned, or
 - (b) if the Revenue-officer considers that that course would, in the circumstances, be advisable.
- (4) Whenever a settlement of rents[2] [is made under this section] reasonable notice shall first be given to the parties concerned; and an appeal shall lie, in the prescribed manner and to the prescribed officer, from such settlement.
- (5) For the purpose of settling rents under this section, the Revenue-officer shall have regard to such rules as may be made in this behalf under section 264.

Decision: officissues: arising, during; course of settlement of rents.

- 86. Where, in any proceedings for the settlement of rents under section 85, any of the following issues arises, namely,—
 - (a) whether the land is, or is not, liable to the payment of rent;
 - (b) whether the land, although entered in the record-of-rights as being held rent-free, is liable to the payment of rent;
 - (c) whether the relation of landlord and tenant exists;
 - (d) whether the land has been wrongly recorded as part of a particular estate or tenancy, or wrongly omitted from the lands of an estate or tenancy;
 - (e) whether the tenant belongs to a class different from that to which he is shown in the record-of-rights as belonging; or
 - (f) whether the special conditions and incidents of the tenancy, or any easement attaching to the land, have not or has not been recorded, or have or has been wrongly recorded,

the Revenue-officer shall try and decide such issue and settle the rent under section 85 accordingly.

Institution of suits before Revenue officer.

87. (1) In proceedings under this Chapter, a suit may be instituted before a Revenue-officer, at any time within three months from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 83, for the decision of any dispute regarding any entry which a Revenue-officer has made in, or any omission which he has made from, the record, [8] [except an entry of a fair rent settled

^[1] The word "three" was substituted for the word "two" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 26(2), printed in Vol. III of this Code.

^[2] These words were substituted for the words "under this section is made after the final publication of the record-of-rights" by *ibid*, s. 25(3).
[3] These words were inserted by *ibid*, s. 27(1)(a), printed in Vol. III of this Code.

(Secs. 87A-89.)

under the provisions of section 85 before the final publication of the record-of-rights,] whether such dispute be-

- (a) between landlord and tenant, or
- (b) between landlords of the same or of neighbouring estates, or
- (c) between tenant and tenant, or
- (d) as to whether the relationship of landlord and tenant exists, or
- (c) as to whether land held rent-free is properly so held, or
- [1][(ee) as to any question relating to the title in land or to any interest in land as between the parties to the suit; or
- (f) as to any other matter;

and the Revenue-officer shall hear and decide the dispute:

Provided that the Revenue-officer may, subject to such rules as may be made in this behalf under section 264, transfer any particular case or class of cases to a competent Civil Court for trial:

Provided also that, in any suit under this section, the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents under this Chapter, where such issue has been tried and decided, or is already being tried, by a Revenue-officer under section 86 in proceedings instituted after the final publication of the record-of-rights.

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer, from decisions passed under sub-section (1)[2][and a second appeal to the High Court shall lie from any decision on appeal of such officer as if such decision were an appellate decree passed by the Judicial Commissioner under Chapter XVI].

[3] [87A. When in a proceeding for the settlement of rents under Undersection 85 or in a suit under section 87 the status of a tenant is in issue, tenant be made the Revenue-officer shall direct that every person holding directly or party in indirectly under such tenant, whose interest may be affected by the certain prodecision of the issue, shall, if he is not already a party to the proceeding and suits. or the suit, as the case may be, be joined as a party.]

88. A note of all rents settled under section 85, and of all decisions Entry in under sub-section (1) and decisions on appeal under sub-section (2) of record-ofsection 87, shall be made in the record-of-rights as finally published under rents settled section 83; and such note shall be considered as part of the record.

89. (1) Any Revenue-officer specially empowered by the Local Revision by Government in this behalf may, on application or of his own motion, Revenuewithin twelve months from the making of any [4] [entry in the draft record-of-rights or of any order or decision under section 83, section 85

rights of and decisions

^[1] This clause was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 27(1)(b), printed in Vol. III of this Code.
[2] These words and letters were inserted by *ibid*, s. 27(2).
[3] This section was inserted by *ibid*, s. 28.
[4] These words were inserted by *ibid*, s. 29.

(Secs. 90-91.)

or section 86, revise the same, whether it was made by himself or by any other Revenue-officer, but not so as to affect any order passed under section 87 or any order passed in appeal under section 85, sub-section (4):

Provided that no such order or decision shall be so revised if a suit or an appeal in respect thereof is pending under section 85, sub-section (4), or section 87, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(2) An appeal shall lie, in the prescribed manner and to the prescribed officer, from any order passed under sub-section (1).

Correction by Revenue officer of mistakes in record-ofrights.

90. Any Revenue-officer specially empowered by the Local Government in this behalf may, on application or of his own motion, within [1] [two years] from the date of the certificate of the final publication of the record-of-rights under sub-section (2) of section 83, correct any entry in such record-of-rights which he is satisfied has been made owing to a bona fide mistake:

Provided that no such correction shall be made if a suit or an appeal affecting such entry is pending under section 87, section 111, clause (8) or clause (10), section 252 or section 253, or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

91. (1) When an order has been made under section 80, or under any law in force before the commencement of this Act, directing the preparation of a record-of-rights, then, notwithstanding anything conmissioner or tained in the foregoing sections of this Chapter, no Deputy Commissioner Civil Court or Civil Court shall, until six months after the final publication of the record-of-rights, entertain any suit or application (not being an application under the Code of Criminal Procedure, 1898,)

Stay of certain proceedings before Deputy Comwhen order made for preparation of record-ofrights.

(a) in which there is in issue, either directly or indirectly, the [2] [existence, non-existence, nature or extent], in the area to which the record-of-rights applies, of any right referred to in clause (n) of section 81, [2] [or for the determination, assessment or alteration of the sum payable by any person in respect of such right; or

(b) for the alteration of the rent or the determination of the status of any tenant in such area:

Provided that, if any person considers himself aggrieved by any act of waste or damage committed by any other person in respect of any waste-land or jungle-land during the period within which suits and applications are prohibited by this section, he may apply to the Deputy

^[1] The words "two years" were substituted for the words "twelve months" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 30, printed in Vol. III of this Code.

^[2] The words "existence, non-existence, nature or extent" were substituted for the words "existence or non-existence" and the words "or for the determination, assessment or alteration of the sum payable by any person in respect of such right;" were inserted by ibid, s. 31.

(Secs. 92-94.)

Commissioner, who may, after such inquiry as he thinks fit, by written order, prohibit the continuance of such waste or damage.

- (2) The period during which the institution of a suit or the making of an application has been delayed by sub-section (1) shall be excluded in computing the period of limitation provided for such suit or application.
- 92. No suit shall be brought in any Court in respect of any order Bar to jurisdirecting the preparation of a record-of-rights under this Chapter, or in respect of the framing, publication, signing or attestation of such a record matters or of any part of it.
- 93. (1) When a record-of-rights in respect of any land has been prepared under this Chapter, and finally published, no application or certain prosuit affecting any such land or any tenant thereof shall, within six months from the date of the certificate of final publication of such record-of-rights, be made or instituted before the Deputy Commissioner Commisor in any Civil Court for the decision of any of the following issues, namely:--

(a) whether the relation of landlord and tenant exists;

- (b) whether the land is part of a particular estate or tenancy;
- (c) whether there is any special condition or incident of the published. tenancy; or

(d) whether any easement attaches to the land.

- (2) If, before the final publication of the record-of-rights in such area, a suit involving the decision of any of the issues mentioned in sub-section (1) has been instituted before the Deputy Commissioner or in a Civil Court, the Revenue-officer shall not entertain any suit under section 87 involving the decision of the same issue.
- (3) Where the making of an application or the institution of a suit. has been delayed by sub-section (1), the period of six months therein mentioned shall be excluded in computing the period of limitation; provided for such suit or application.
- 94. (1) When the rent of an occupancy holding is entered in a Period for record-of-rights which has been prepared and finally published under this which rents Chapter or any law in force before the commencement of this Act, then, entered in the recordsubject to the provisions of sections [1][85], 87, 89 and 90,

such rent shall not, except on the ground of a landlord's improve- are to ment, be enhanced for a period of-

(a) fifteen years after the final publication of the record-of-rights, when such publication was made after the commencement of this Act, or

diction of Courts in relating to record_ofrights.

Stay of ceedings before Deputy sioner or Civil Court when record-ofrights

of-rights remain unaltered.

^[1] The figures "85," were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & Q. Act 6 of 1920), s. 32(1), printed in Vol. III of this Code.

(Sec. 95.)

(b) seven years after the final publication of the record-of-rights, when such publication was made before the commencement of this Ast:

and such rent shall not be reduced within the said periods, respectively, save on the ground of alteration in the area of the holding or on the ground that the soil of the holding has, without the fault of the raiyat, become permanently deteriorated by a deposit of sand or other specific cause, sudden or gradual;

and no demand for rent in respect of an occupany holding, in excess of the amount entered in the said record-of-rights, shall be enforceable, save as provided in this Chapter or in section 32,[1][or, where proceedings by way of appeal or revision were pending on the date of final publication of the record-of-rights, save in accordance with the decision in such proceedings or in any appeal preferred therefrom]:

Provided that, in any area in respect of which a record-of-rights has been finally published before the commencement of this Act, a Revenue-officer may, on the application of any landlord, made within two years from the commencement of this Act, assess a fair rent on lands which are included in a holding and are assessable with rent but for which no rent has been paid or has been entered as payable in the record-of-rights.

(2) The periods of fifteen years and seven years mentioned in clauses (a) and (b) of sub-section (1) shall be counted from the date of the final publication of the record-of-rights.

Expenses of proceedings under this Chapter.

95. (1) When the preparation of a record-of-rights has been directed or undertaken under this Chapter,

the expenses incurred in carrying out the provisions of this Chapter in any local area, estate, tenure or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary-marks and other survey marks erected for the purpose of carrying out the provisions of this Chapter), or such part of those expenses as the Local Government may direct,

shall be defrayed by the landlords, tenants and occupants of land in that local area, estate, tenure or part, in such proportions, and in such instalments (if any), as the Local Government, having regard to all the circumstances, may determine.

(2) The cost of preparing copies of survey maps and extracts from record-of-rights under this Chapter for distribution to landlords and tenants shall be deemed to be part of the expenses incurred in carrying out the provisions of this Chapter.

^[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 32 (2), printed in Vol. III of this Code.

(Secs. 96-98.)

- (3) The estimated amount of the expenses likely to be incurred for the maintenance, repair or restoration of boundary-marks for a period not exceeding fifteen years, or such part of such amount as the Local Government may direct, may be recovered in advance in the same manner as if such expenses had been already incurred.
- (4) The portion of the expenses referred to in the foregoing provisions of this section which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure. *

96. In framing a record-of-rights, and in deciding disputes, under Power of this Chapter, the Revenue-officer shall give effect to any lawful agreement Revenueor compromise made or entered into by any landlord and his tenant:

Provided as follows:—

officer to give effect to agreement or compro-

- (a) the Revenue-officer shall not give effect to any agreement or mise. compromise the terms of which, if they were embodied in a contract, could not be enforced under this Act; and
- (b) where the terms of any agreement or compromise are such as might unfairly or inequitably affect the rights of third parties, the Revenue-officer shall not give effect to such agreement or compromise unless and until he is satisfied by evidence that the statements made by the parties thereto are correct.

Illustration.—A, a proprietor, agrees that B, his tenant, shall be recorded as an occupancy-raiyat. This affects the rights of the tenants of B. The Revenue-officer must, under proviso (b), inquire whether B is a tenure-holder or a raiyat, within the meaning of section 5 or section 6. If he finds, on the evidence, that B is a raiyat, he may give effect to the agreement. If he so finds that B is a tenure-holder, he must not give effect to the agreement.

97. When a rent is settled by a Revenue-officer under this Chapter, Date from it shall take effect from the beginning of the agricultural year next after which settled rent takes the date of the decision finally fixing the rent.

effect.

- 98. (1) The Local Government may at any time, either of its own Revision of motion or on the application of any landlord or tenant, direct that any record-of-rights, and record-of-rights which has been finally published under this Act or under new settleany law in force before the commencement of this Act, or any portion ment of of any such record-of-rights, be revised, in the prescribed manner, but orders of not so as to affect any rent entered therein.
 - Local Government.
 - (2) At any time after the expiration of the period of-
 - (a) fifteen years from the date of the certificate of the final publication of a record-of-rights, when such publication was made after the commencement of this Act, or

(Secs. 99-100A.)

(b) seven years from the date of the certificate of the final publication of a record-of-rights, when such publication was made before the commencement of this Act,

and thereafter at intervals of periods of fifteen years, the Local Government may, of its own motion or on the application of any landlord or tenant, direct-

- (i) that such record-of-rights or any portion thereof be revised in the prescribed manner, and
- (ii) that a settlement of rents payable by tenants be made under section 85.
- (3) The foregoing sections of this Chapter shall, subject to any rules made in this behalf under section 264, apply to every revision and settlement referred to in sub-section (1) or sub-section (2).

Enhancement of rent where application under section 98 is rejected.

99. If the Local Government rejects any application made by a landlord under section 98, sub-section (2), for a revision of a record-ofrights after the expiration of the period of fifteen years or the period of seven years, as the case may be, referred to in that sub-section, such landlord may apply to the Deputy Commissioner for the enhancement of any rent entered in such record-of-rights as being payable to him.

Validation of directions the commencement of this certain rights.

Application of certain provisions to rights of pasturage, to take forest produce, etc., and to payments in respect

thereof.

100. Where a direction has been given, in any order made under given, before section 101 of the Bengal Tenancy Act, 1885,[1] before the commence-8 of 1885. ment of this Act, for the record of any rights of the kind mentioned in clause (n) of section 81 of this Act, such direction shall be deemed to be Act, for the as valid as if the said clause had been enacted before such order was made.

> [2] [100A. [3][*] The provisions of this Chapter, excluding section 94, and of sections 53 to 58, both inclusive, and section 63, shall, so far as may be, apply to any of the following rights (not being rights created by a [4] [registered contract]), namely, rights of pasturage, rights to take forest-produce, rights of fishery, or other similar rights, and to the sum, if any, payable by a person in respect thereof, as if such rights, person and sum were respectively land held by a tenant, the tenant thereof, and the rent payable in respect thereof, and as if the payee of such sum were the landlord under whom such person holds.

[5][**]].

[5] Sub-section (2) was omitted by *ibid*.

Printed in Vol. I of this Code. [2] This section was inserted by the Chota Nagpur Tenancy (Amendment) Act,

^{1920 (}B. & O. Act 6 of 1920), s. 33, printed in Vol. III of this Code.

[3] The brackets and figure "(1)" were omitted after the figures and letter "100A" by the Chota Nagpur Tenancy (Amendment) Act, 1923 (B. & O. Act 5 of 1923), s. 4, printed in Vol. III of this Code.

^[4] These words were substituted for the words "specific contract for a definite period " by ibid.

(Secs. 101-105.)

CHAPTER XIII.

PRAEDIAL CONDITIONS, AND THE COMMUTATION AND RECORD THEREOF.

101. From and after the commencement of this Act,—

- (a) no tenancy shall be created with any prædial condition against attached, other than rent-free tenancies with the sole conditions. condition of rendering personal service; and
- (b) no new prædial condition shall be imposed on any tenancy in existence at the time of such commencement.
- 102. When the original conditions of a tenancy cannot be ascertain- Liability of ed, the tenant shall not be liable to any prædial conditions other than or tenant when original in excess of those to which, by local custom or usage, he, in common conditions with the general body of the class to which he belongs in the village, of tenancy cannot be tenure or estate in which the lands of the tenancy are situated, is liable: ascertained.

Provided that, in any case in which prædial conditions have been complied with by a tenant for a period of five years continuously, any Revenue-officer acting under this Chapter may, when commuting such conditions under this Chapter, presume that the same have been complied with in accordance with local custom or usage or in accordance with an express or implied contract made at the commencement of the tenancy.

103. When, in any proceedings under this Act, it becomes Method of calculating necessary for a Court to calculate the value of any prædial condition, present such value shall be taken to be its average value during the ten years value of immediately prior to the proceedings, or during any shorter period for condition. which evidence may be available.

104. When, in any suit for the recovery of rent, it is sought to Procedure recover the value of the pradial conditions appurtenant to a tenancy, an in suit for rent and issue may be framed as to whether the value of the prædial conditions, value of when added to the rent payable in respect of the tenancy, exceeds a fair prædial conditions. rent; and, if it is found that the resulting amount exceeds a fair rent, the Court shall decree the rent and so much (if any) of the value of the prædial conditions as, together with the rent, will not exceed the sum which would, having regard to the special circumstances of the case, be a fair rent.

- 105. (1) When any land is held subject to any prædial conditions, Voluntary the tenant or the landlord may apply in writing to a Revenue-officer for commutation of such conditions commutation of such conditions.
- (2) The Revenue-officer shall thereupon cause a notice to be served on the landlord or the tenant, as the case may be, and shall fix a day for considering the application; and on such day, or any day thereafter to which the hearing may be adjourned, shall proceed to inquire into the matter and to determine the amount which, in his judgment, is fairly and equitably payable in commutation of such conditions.

(Secs. 106-108.)

(3) In calculating the said amount, the Revenue-officer shall have regard only to the conditions to which the tenant is liable in accordance with local custom or usage or with any contract made when the tenancy commenced, and to the money value of such conditions at the time of making such calculation, and shall follow the procedure provided in section 103:

Provided that the amount payable in commutation shall be so fixed that the total annual rent of the land, including such amount as aforesaid, shall not exceed the sum which would, having regard to the special circumstances of the case, be a fair and reasonable rent if the land were not held subject to any prædial conditions.

Power to order record of prædial conditions, with or without commutation.

- Power to 106. (1) The Local Government may, in any case in which it is, order record in its opinion, expedient so to do, make an order directing either—
 - (a) that a record of all prædial conditions to which the lands within any local area or any estate, tenure or part thereof are subject shall be prepared, and a commutation of such conditions made, by a Revenue-officer; or
 - (b) that a record as aforesaid be made by a Revenue-officer without commutation of such conditions as aforesaid.
 - (2) A notification in the [1][**] Gazette of an order under this section shall be conclusive evidence that the order has been duly made.
 - (3) The record of prædial conditions shall be prepared in the prescribed manner.

Preparation of record.

- 107. (1) Whenever an order is made under section 106, the Revenue-officer shall thereupon proceed to prepare a record containing the following particulars, namely:—
 - (a) the name of each tenant;
 - (b) the name of his landlord;
 - (c) the rent payable for the lands held by each tenant at the time the record is being prepared;
 - (d) the prædial conditions to which all or any of such lands are subject;
 - (e) the amount which, in the judgment of the Revenue-officer, may fairly be deemed payable in commutation of such conditions, and
 - (f) any other prescribed particulars.
- (2) In calculating the amount payable in commutation of such conditions, the Revenue-officer shall be guided by the provisions of section 105, sub-section (3).

Publication of record.

108. (1) When the Revenue-officer has prepared a record under section 107, he shall cause a draft of the same to be locally published in the prescribed manner and for the prescribed period, and shall receive

^[1] The word "Calcutta" was omitted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2(2), printed in Vol. III of this Code.

(Secs. 109-111.)

and consider any objections which may be made to any entry therein or to any omission therefrom during the period of publication.

- (2) When objections have been considered and disposed of in the prescribed manner, the record shall be finally framed and published in the prescribed manner.
- (3) Separate drafts or records may be published under sub-section (1) or sub-section (2) for different local areas, estates, tenures or parts thereof.
- 109. An appeal shall lie, in the prescribed manner and to the Appeal from prescribed officer, from any order of a Revenue-officer under this Revenue-Chapter.

officers.

110. The Commissioner or the Board may direct the revision of any Revision by record prepared under this Chapter, or any portion of such record, at or Board. any time within two years from the date of the final publication of the record, but not so as to affect any decision from which an appeal has been preferred under section 109:

Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

111. In every local area, estate, tenure or part thereof, in which a Procedure survey is being made and a record-of-rights is being prepared under this survey and Act or under any law in force before the commencement of this Act,

record-of-

and in which a record of prædial conditions is being prepared and a being made. commutation thereof is being made under an order issued under section 106.

sections 107 to 109 shall not apply, and the following provisions shall have effect, namely:-

- (1) The Revenue-officer shall, at the time of attesting the preliminary record, ascertain all the pradial conditions to which, by local custom or usage or by contract made when the tenancy commenced, each tenant is liable, and the cash values of such conditions; and shall prepare a statement, in the prescribed form, showing the conditions and values so ascertained.
- (2) In calculating the cash value of such conditions, the Revenueofficer shall be guided by the provisions of section 105, sub-section (3).
- (3) The Revenue-officer shall enter in the khatiyan of each tenant the cash value of the prædial conditions (if any) to which such tenant is liable, as ascertained under clause (1).
- (4) If any tenant is liable, by local custom or usage or by contract made when the tenancy commenced, to any prædial conditions other than those to which the general body of

(Secs. 112-114.)

tenants are liable, or is not liable to all the prædial conditions to which the general body of tenants are liable, the Revenue-officer shall also specify in the *khatiyan* the prædial conditions to which such tenant is liable.

- (5) The statement prepared under clause (1), and the entries in the *khatiyan*, shall be published in draft in the same manner and for the same period as the record-of-rights.
- (6) Objections as to entries or omissions in the statement or khatiyan relating to prædial conditions may be made under the same conditions as objections to entries in or omissions from the record-of-rights, and shall be disposed of in the same manner as such objections.
- (7) After the disposal of objections, the said statement, and the entries in the *khatiyan* relating to prædial conditions, shall be finally published at the same time and in the same manner as the record-of-rights.
- (8) At any time within three months from the date of the certificate of the final publication of the record-of-rights, a suit may be instituted before a Revenue-officer, for the decision of any dispute regarding any entry in the record relating to prædial conditions or regarding any omission to enter any such conditions in the record; and the Revenue-officer shall hear and decide the dispute.
- (9) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits.
- (10) An appeal shall lie, in the prescribed manner and to the prescribed officer, from any decision of a Revenue-officer under clause (8).
- 112. A note of all decisions under clause (8) and decisions on appeal under clause (10) of section 111, shall be made in the record-of-rights as finally published under section 83, and such note shall be considered as part of the record.
- 113. Where, in any proceeding under this Chapter or under section 61, a question arises as to whether a payment in kind is a prædial condition or a payment of rent in kind, the Revenue-officer acting under this Chapter, or the officer acting under section 61, as the case may be, shall, after such inquiry as he may consider necessary, decide whether in fact the payment is a prædial condition or not.
- 114. (1) When the commutation of any prædial conditions is settled under this Chapter, for any local area or estate, tenure or part thereof, the settlement shall take effect from the beginning of the acricultural year next after the final publication of the record.

Note of decisions in recordof-rights.

Decision of question as to whether a payment in kind is a prædial condition or a payment of rent in kind. Commencement and effect of commutation.

(Secs. 115-118.)

- (2) The amount determined by a Revenue-officer under this Chapter to be payable by a tenant in commutation of prædial conditions shall be deemed to be part of the rent payable by the tenant, and shall be recoverable accordingly.
- 115. When in any case the proceedings under section 105 have been Expenses of completed, the Revenue-officer shall apportion the total expenses thereof commutabetween the landlord and tenant in such proportion as, having regard to tion. all the circumstances, he may deem fit; and the amounts so apportioned shall be recoverable as an arrear of land-revenue.

116. (1) The expenses incurred by the Government in carrying out Expenses of in any local area or any estate, tenure or part thereof any order made record and under section 106, or such part of those expenses as the Local Governcompulsory. ment may direct, shall be defrayed by the landlords and tenants of land tion. in that local area, estate, tenure or part, in such proportions as the Local Government, having regard to all the circumstances, may determine.

(2) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable by the Government as if it were an arrear of land-revenue due in respect of the said local area, estate, tenure or part.

Explanation.—The word "tenure" in this section includes all revenue-free and rent-free tenures and holdings within a local area, estate or tenure.

. 117. No proceedings under this Chapter shall bar the right of any Saving of tenant or landlord to claim a reduction or enhancement of rent under right to this Act after such proceedings have been completed.

tion or enhancement of rent.

CHAPTER XIV.

RECORD OF LANDLORDS' PRIVILEGED LANDS.

118. (1) The expression "landlords' privileged lands", as used in Definition of this Chapter, means—

"' landlords' privileged

- (a) lands which are cultivated by the landlord himself with his lands own stock or by his own servants or by hired labour, or are held by a tenant on lease for a term [1] [exceeding one year, or on a lease written or oral for a period of one year or less], and which are, by custom, recognized as privileged land in which occupancy-rights cannot accrue, and
- (b) lands which are entered as manjhihas or bethkheta in any register prepared and confirmed under the Chota Nagpur Tenures Act, 1869.[2]

Ben. Act 2 of 1869.

^[1] These words were substituted for the words "of years or year by year" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920),s. 34(1), printed in Vol. III of this Code.

^[2] Printed ante, p. 105.

⁶ L. D.

(Secs. 119-122.)

(2) From such date[1] as the Local Government may, by notification, direct, no lease [2][for a term which exceeds or might in any possible event exceed one year] shall be considered for the purposes of clause (a) of this section unless it be in writing.

Power to direct a survey and record of landlords' privileged lands. Application of certain sections.

119. The Local Government may, by notification, direct a Revenue-officer to make a survey and record of all lands in any specified local area which are landlords' privileged lands within the meaning of clause (a) of section 118.

120. When a notification has been published under section 119, directing the making of a record, the provisions of sections 83, 84, 87, 88, 90, 95 and 96, so far as they may be applicable, shall apply to such record as if it were a record-of-rights referred to in those sections.

Power to record landlords' privileged lands on application of landlord or tenant. 121. When any land is alleged to be a landlord's privileged land within the meaning of clause (a) of section 118, then, on the application of the landlord or of any tenant of the land, and on his depositing the required amount for expenses, a Revenue-officer may ascertain and record whether the land is or is not landlords' privileged land within the meaning of the said clause:

Provided that, when a record of such lands has been or is being made by a Revenue-officer under section 119, no application shall be entertained under this section.

Procedure in inquiries.

122. In any inquiry under this Chapter, a Revenue-officer-

- (1) shall have regard to any evidence that may be available in respect of the following among other matters, namely:—
 - (a) who originally reclaimed the lands and brought them under cultivation,
 - (b) whether the lands have at any time been let as landlords' privileged lands or as raiyati lands, and
 - (c) whether the lands have, since their reclamation, been let year by year, or for specific periods, or for indefinite periods; and
- (2) shall proceed in the prescribed manner; and
- (3) shall receive in evidence any judgment, decree or order of a Civil Court or of the Deputy Commissioner, if the same be relevant:

but no such judgment, decree or order shall be conclusive proof that the lands are, or are not, landlords' privileged lands.

^[1] The 1st of April 1909 was the date appointed by notification under this section, for which see Calcutta Gazette of 1909, part I, page 11. An identical notification was issued for the Manbhum district see Calcutta Gazette of 1910, Part I, page 224.
[2] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 34(2), printed in Vol. III of this Code.

of 1869.

(Secs. 123-128.)

123. In any inquiry by a Revenue-officer under this Chapter or by Presumption any Court, as to whether lands are or are not landlords' privileged lands, that lands the officer or Court shall presume, until the contrary is proved, that the landlords' lands are not landlords' privileged lands.

lands.

124. Where any land in any village is entered as manjhihas or No land in bethkheta in any register prepared and confirmed under the Chota certain villages to Nagpur Tenures Act, 1869,[1] a Revenue-officer acting under this be recorded Chapter shall not record any other lands in that village as being as landlords' landlords' privileged lands.

privileged

125. When a record of landlords' privileged lands has been Exclusion of prepared under section 119 for any area, no other lands in that area unrecorded lands from shall be deemed to be landlords' privileged lands.

category of landlerds' privileged

126. An appeal shall lie, in the prescribed manner and to the Appeal. prescribed officer, from decisions and orders of a Revenue-officer under this Chapter.

CHAPTER XV.

RECORD-OF-RIGHTS AND OBLIGATIONS OF RAIYATS HAVING KHUNT-KATTI RIGHTS, VILLAGE HEADMEN AND OTHER CLASSES OF TENANTS

127. (1) The Local Government may make an order directing that Record-ofa record be prepared by a Revenue-officer of the rights and obligations in rights and any specified local area of-

(a) raivats having khunt-katti rights;

(b) [2][village headmen]; or

(c) any other class of tenants;

and that a settlement of fair rents to be paid by such persons, or any and other of them, be made.

Explanation.—The word "rights," as used in this sub-section, includes the right of a village headman to hold his office, as well as his right to hold land.

(2) A notification in the [3][**] Gazette of an order under this section shall be conclusive evidence that the order has been duly made.

128. (1) When a notification has been published under section 127, Application directing the preparation of a record, the provisions of section 81, section sections.

obligations

of raiyats having

khunt-katti

rights, village

headmen,

classes of

tenants.

^[1] Printed ante; p. 105.
[2] The expression "village headmen" was substituted for the words "headmen of villages or groups of villages, whether known as mankis or pradhans or manjhis or otherwise" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920) s. 35, printed in Vol. III of this Code.
[3] The word "Calcutta" was omitted by ibid, s. 2(2).

(Secs. 129-132.)

83, section 84, sub-sections (1) and (2), and sections 89 to 96, so far as they may be applicable, shall apply as if such record were referred to in those sections.

- (2) When any such notification directs that a settlement of fair rents be made, the provision of section 85, sub-sections (3), (4) and (5), section 86, section 89 and sections 95 to 97, so far as they may be applicable, shall apply to such settlement as if it were a settlement referred to in those sections.
- 129. At the time of the final publication of a record prepared by a Revenue-officer under this Chapter, that officer shall cause a copy of the entries therein to be served, in the prescribed manner, on all persons interested in such entries, so far as such persons can be ascertained.
- 130. (1) Where there is a dispute regarding the correctness of any entry made in a record prepared under this Chapter, or regarding any incorrect omission therefrom, a suit may be instituted before a Revenueofficer, at any time within three months from the date of the certificate of the final publication of the record:

Provided that, in any suit under this section, the Revenue-officer shall not try any issue which has been, or is already, directly and substantially in issue between the same parties, or between parties under whom they or any of them claim, in proceedings for the settlement of rents, where such issue has been tried and decided, or is already being tried, by a Revenue-officer acting under section 86 in proceedings instituted after the final publication of the record.

- (2) In all suits under this section the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.
- (3) An appeal shall lie, in the prescribed manner and to the prescribed officer, from the decision of the Revenue-officer in such suits.

Note of final record.

131. A note of all decisions under sub-section (1) of section 130, decisions in and of all decisions on appeal under sub-section (3) of that section, shall be made in the record prepared under section 127, and such note shall be considered as part of the record.

Evidential value of entries.

132. When a record has been finally published under section 128, or amended under section 131, the entries made therein shall [1][in every suit, application or proceeding to which the landlord or a tenant. or any person claiming to be the landlord or a tenant is a party be conclusive evidence of the rights and obligations of the tenants to which such entries relate, and of all the particulars recorded in such entries.

Notice of entries to interested persons.

Suits to decide disputes as to entries in, or omissions from, record.

^[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 36, printed in Vol. III of this Code.

(Secs. 133-138.)

133. In making inquiries under this Chapter into the rights and Revenueobligations of tenants, the Revenue-officer shall have regard to the origin officer to have regard and nature of each tenancy and to the real status of the tenant, notwith- to origin standing that the tenant may have been described in any document as a and nature of tenancy thikadar or temporary lease-holder or in any other similar terms.

and status of tenant.

134. When a record of the rights and obligations of raiyats having Exclusion of khunt-katti rights has been prepared under this Chapter for any local unrecorded area, no lands in such area, which are not entered in such record, shall category of be recognized as lands in respect of which khunt-katti rights can be khunt-katti acquired.

CHAPTER XVI.

JUDICIAL PROCEDURE MATTERS COGNIZABLE BY THE DEPUTY IN COMMISSIONER.

135. The Deputy Commissioner may hold a Court, for hearing and Place for determining suits and applications under this Act, in any place within holding Deputy the local limits of his jurisdiction:

Commis-Court.

Provided that every hearing and decision shall be in open Court, sioner's and that the parties to the suit or application, or their agents, shall have had due notice to attend at such place.

136. Suits and applications before the Deputy Commissioner under Office for this Act shall respectively be instituted and made—

instituting suits and making applications.

- (a) in the revenue-office of the district; or
- (b) when the cause of action has arisen within the local limits of the jurisdiction of a Deputy Collector who is empowered to receive such suits or applications, then in the office of such Deputy Collector; or

(c) in the office of the Revenue-of her having jurisdiction to entertain the same.

137. The Deputy Commissioner may withdraw any suit, [1] [applica-Withdrawal tion or proceeding] from any Deputy Collector or Revenue-officer who of suits. is exercising powers of the Deputy Commissioner under this Act, and may try it himself or transfer it to any Deputy Collector.

138. (1) When any suit is instituted or application made in respect Jurisdiction of any land comprised in a tenure or holding, and such land is situated is situated in more than one district or subdivision, the district or subdivision in in more than which the greater part of such land is situated shall be deemed to be or subdivithe district or subdivision in which the cause of action has arisen;

and, if any question be raised respecting the district or subdivision in which the greater part of the land is situated, the Board or (if the

^[1] The words "application or proceeding" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 37, printed in Vol. III of this Code.

(Sec. 139.)

land is situated in one district) the Deputy Commissioner shall decide the question.

(2) Except as provided in sub-section (1), no Deputy Commissioner shall exercise any jurisdiction under this Act in respect of any land situated beyond the local limits of his jurisdiction, even if such land forms part of an estate the revenue of which is paid into the treasury of his district.

Certain suits and applicathe Deputy Commissioner.

139. The following suits and applications shall be cognizable by tions cogniz the Deputy Commissioner, and shall be instituted and tried or heard able only by under the provisions of this Act, and shall not be cognizable in any other Court, except as otherwise provided in this Act, namely:—

- (1) all suits for the delivery of leases or counterpart engagements;
- [1] (2) (a) all suits and applications for the determination of the rent payable by a tenant for—
- (b) all suits and applications not otherwise provided for in this Act for the assessment of rent upon, or for alteration of rent payable by a tenant for—
- (c) all suits for arrears of rent on account of—
- agricultural land, whether subject to the payment of rent or only to the payment of dues recoverable as if they were rent;
- (3) (a) all applications to determine the existence, non-existence, nature or extent of—
- (b) all applications for determination of the sum payable by any person in respect of-
- (c) all applications for assessment of the sum fairly payable by any person, or for alteration of the sum payable by any person, in respect of—
- (d) all applications for damages in respect of exceeding, or in respect of interference with the enjoyment of—
- (e) all suits for arrears of anything payable in respect of—
 - [2] [any of the following rights (not being rights created by a registered contract), namely, rights of pasturage,] rights to take forest produce, rights of fishery or other similar rights;
- (4) all suits and applications [3] [under this Act] to eject any tenant of agricultural land or to cancel any lease of agricultural land:

^[1] Clauses (2), (3), (4), (4A), (5) and (6) were substituted for the original clauses (2) to (6) by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 38, printed in Vol. III of this Code.

[2] These words were substituted for the words "rights of pasturage" by the Chota Nagpur Tenancy (Amendment) Act, 1923 (B. & O. Act 5 of 1923), s. 5(1), printed in Vol. III of this Code.

[3] The words "under this Act." were inserted by ibid, s. 5(2),

(Secs. 139A-140.)

- (4A) all suits for ejectment of a trespasser where the plaintiff claims as alternative relief that the defendant be declared liable to pay for the land in his possession a fair rent;
- (5) all suits and applications to recover the occupancy or possession of any land from which a tenant has been unlawfully ejected by the landlord or any person claiming under or through the landlord:
- (6) subject to the provisions of sub-section (5) of section 74A, all suits by or against a village-headman for a declaration of title in, possession of, ejectment from, or recovery of, his office or land comprised in his village-headman's tenancy, whether based or not on an allegation of the existence or non-existence of the relationship of landlord and tenant, and whether brought or not by or against the landlord of such land];
- (7) all suits, by landlords and others in receipt of the rent of land, against any agents employed by them in the management of land or the collection of rents, or the sureties of such agents, for money received or accounts kept by such agents in the course of such employment, or for papers in their possession; and
- (8) all suits and applications in respect of which jurisdiction is conferred by this Act on the Deputy Commissioner:
 - [1][Provided that the Deputy Commissioner may, subject to such rules as may be made in this behalf under section 264, transfer any particular suit or application or any class of suits or applications cognizable by him under this section to a competent Civil Court for trial.]

[2] [139A. Subject to the provisions of Chapter XII, no Court shall Exclusive entertain any suit, concerning any matter in respect of which an jurisdiction application is cognizable by the Deputy Commissioner under section Commis-139, and the decision of the Deputy Commissioner on any such applica-sioner in tion shall, subject to the provisions of this Act relating to appeal, be cases. final.

140. Subject to such rules (if any) as may be made in this behalf Collective under section 264, a suit may be instituted before, or an application suits or may be made to, the Deputy Commissioner collectively by or against any number of tenants holding land in the same village; and an allegation that such tenants are wrongly joined shall be no ground for dismissing a suit or refusing to hear an application;

applications.

^[1] This proviso was added by the Chota Nagpur Tenancy (Amendment) Act, 1923 (B. & O. Act 5 of 1923), s. 5 (3), printed in Vol. III of this Code.

[2] This section was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1930 (B. & Q. Act 6 of 1920), s. 59, printed in Vol. III of this Code.

(Secs. 141-142.)

but no order shall be passed in any such collective suit or on any such collective application unless the officer making the same is satisfied that all parties have had an opportunity to appear and make objection to any claims preferred against them;

and if at any time it appears to the Deputy Commissioner that the question between any two of the parties of whom one is so joined with others cannot conveniently be jointly tried or heard, the Deputy Commissioner may order a separate trial or hearing.

Order or decree in collective suit or on collective application to specify how far it affects each tenant. Suit by co-sharer landlord for rent.

- 141. Every order or decree passed in any case which is tried or heard jointly under section 140 shall specify the extent to which each of the tenants named in the order or decree shall be affected thereby.
- 142. (1) Notwithstanding anything contained in section 257, a co-sharer landlord may institute a suit to recover from a tenant—
 - (a) his share of the rent, when such share is collected separately,
 - (b) the whole of the rent due to the plaintiff and his co-sharers, when all or any of his co-sharers who refuse to join in the suit are made defendants therein.
- (2) When, in a suit instituted under clause (b) of sub-section (1), the plaintiff is unable to ascertain what rent is due for the whole tenure or holding, or whether the rent due to the other co-sharer landlords has been paid or not, owing to the refusal or neglect of the tenant or the said landlords to furnish him with correct information on these points or either of them,

the Deputy Commissioner shall determine-

- (i) what sum (if any) is due to the plaintiff for rent, interest thereon, and costs, and
- (ii) what sums (if any) are due to the said landlords, respectively, on account of their share of the rent and interest thereon,

for the period in respect of which the suit is brought; and shall decree the suit accordingly.

- (3) Notwithstanding anything contained in Explanation I to section 47, or in section 196, a decree awarding to a plaintiff a sum referred to in clause (i) of sub-section (2) shall, as regards the remedies for enforcing the same, be as effectual as a decree obtained by a sole landlord or an entire body of landlords in a suit brought for the rent due to all the co-sharers.
- (4) When the sums due from a tenant to any co-sharer landlord are determined under clause (ii) of sub-section (2), in respect of any

(Secs. 143-144.)

period, then no further suit shall lie against such tenant for rent alleged to be due to such landlord in respect of that period.

143. Suits before the Deputy Commissioner under this Act shall Institution be instituted by presenting a statement of claim, showing-(a) the name, description and place of abode of the plaintiff;

presentation of state-

of suits by

- (b) the name, description and place of abode of the defendant, ment of so far as they can be ascertained;
- (c) the substance of the claim; and
- (d) the date of the cause of action.
- 144. (1) In all suits and applications before the Deputy Additional Commissioner for the recovery of an arrear of rent, or for the ejectment particulars required in of a tenant from any tenure or holding, or for the recovery of occupancy statement of or possession of any tenure or holding, the statement of claim or claim in certain suits application shall contain, in addition to the particulars required by and in section 143,-

certain applications.

- (a) a specification of the situation and designation of the land held by the tenant, and
- (b) a specification of the extent and boundaries of such land, or (if the plaintiff is unable to specify the extent or boundaries) a description sufficient for the identification of the land.
- (2) In all suits and applications referred to in sub-section (1), and in all other suits and applications before the Deputy Commissioner under this Act relating to the rent of land or to any right or easement arising out of land,

if a survey has been made and a record-of-rights has been finally published under this Act or under any law in force before the commencement of this Act, in respect of the land to which the suit or application relates,

the statement of claim or application shall further contain the

following particulars, namely:-

(i) a list of the survey plots comprised in the tenancy,

(ii) a statement of the rental of the tenancy according to the record-of-rights, and

(iii) a copy of all entries in the record-of-rights in regard to the subject-matter of the suit or application,

unless the Deputy Commissioner is satisfied, for reasons to be recorded in writing, that it is not necessary that such particulars or any of them should be furnished or that the plaintiff was prevented by any sufficient cause from furnishing such particulars or any of them:

Provided that, in all cases in which the Deputy Commissioner admits a statement of claim or application which does not contain the said particulars, he may direct the supply, without payment of fee,

(Secs. 145-150.)

of a verified or certified copy of, or extract from, the record-of-rights relating to the tenancy and the question in dispute in the suit or application.

(3) Where, since the record-of-rights was prepared and finally published, an alteration has been made in the area of the tenancy, the statement of claim must further show how the amount of the rent claimed in the suit has been calculated.

Substitution of copies or extracts for original documents admitted

145. When any account-books. rent-rolls. collection-papers. measurement-papers or maps have been produced by the landlord before the Deputy Commissioner in any suit or proceeding under this Act, and have been admitted in evidence in the suit or proceeding or in evidence. in any inquiry pending before the Deputy Commissioner,

> copies of, or extracts from, such documents, certified by a duly authorized officer of the Court of the Deputy Commissioner to be true copies or extracts, may, with the permission of the Deputy Commissioner, be substituted on the record for the originals, which may then be returned to the landlord:

> and thereafter copies or extracts, so certified, may be admitted in evidence in any other suit or proceeding instituted before the same or any other Deputy Commissioner under this Act, unless the Deputy Commissioner before whom they are produced sees fit to require the production of the originals.

Statement whom to be presented.

146. The statement of claim shall be presented by the plaintiff, or of claim by by an agent of the plaintiff who is acquainted with the facts of the case.

Signature and verification of statement of claim.

- 147. The statement of claim shall be subscribed and verified at the foot, by the plaintiff or his agent, in the following form:—
- "I, A B, do declare that the above statement is true to the best of my knowledge, information and belief."

Production of documents by plaintiff.

- 148. (1) If the plaintiff relies in support of his claim on any document in his possession, he must produce such document before the Deputy Commissioner at the time of presenting his statement of claim.
- (2) If such document be not so produced, it shall not afterwards be admitted unless the Deputy Commissioner, for sufficient reasons to be recorded in writing, thinks fit to admit it.

Production. of documents by defendant.

149. If the plaintiff requires the production of any document in the possession or power of the defendant, he may, at the time of presenting his statement of claim, deliver a description of the document to the Deputy Commissioner, in order that the defendant may be directed to produce the document.

Return or amendment of statement of claim.

150. If the statement of claim does not contain the several particulars required by section 143 or by sections 143 and 144, as the case may be, or is not subscribed and verified as required by section 147,

(Secs. 151-157.)

the Deputy Commissioner may return the statement to the plaintiff, or may at his discretion allow it to be amended.

151. If the statement of claim is in proper form, the Deputy Issue of Commissioner shall direct the issue of a summons to the defendant, in to the prescribed form[1][and also of a copy of the plaint or, if there are two defendant. or more defendants, of such portion of the plaint as relates to him.]

152. If the plaintiff requires the personal attendance of the defendant, Attendance and satisfies the Deputy Commissioner that such personal attendance of defendant personal attendance dant personal attendance of defendant personal attendance dant persona is necessary, or if the Deputy Commissioner of his own accord requires sonally or such personal attendance, the summons shall contain an order for the by agent. defendant to appear personally on a day to be specified in the summons; otherwise the summons shall order the defendant to appear personally or by an agent who is acquainted with the facts of the case.

153. The said summons shall order the defendant to produce any Producdocument which he has in his possession and of which the plaintiff tion of demands inspection, or upon which the defendant may intend to rely and in support of his defence;

documents witnesses.

and shall also enjoin the defendant to bring his witnesses with him if they are willing to attend without issue of process.

154. If the amount of the cost of serving the summons be not Deposit of deposited in the prescribed manner, the claim shall be rejected; but in cost of serving such case the plaintiff may present another statement of claim at any summons. time within the period provided by this Act for the limitation of suits.

155. If, on the day fixed by the summons for the appearance of the when defendant, or on any subsequent day to which the hearing of the case neither may be postponed prior to the framing of issues as provided in section party 167, neither of the parties appears in person or by agent, the case shall appears. be struck off, with liberty to the plaintiff to bring a fresh suit unless precluded by the provisions for the limitation of suits contained in this Act.

156. If, on such day, only the defendant appears, the Deputy Procedure Commissioner shall dismiss the suit, unless the defendant admits the when only claim or part thereof, in which case the Deputy Commissioner shall pass defendant a decree against the defendant upon such admission, without costs, and, appears. where part only of the claim has been admitted, shall dismiss the suit so far as it relates to the remainder:

Provided that such decree, if there be more than one defendant, shall be only against the defendant who makes the admission.

157. If, on such day, only the plaintiff appears, the Deputy Procedure Commissioner, upon proof that the summons has been duly served, shall the proceed to examine the plaintiff or his agent, and, after considering the plaintiff

^[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, appears, 1920 (B. & O. Act 6 of 1920), s. 40, printed in Vol. III of this Code.

(Secs. 158-163.)

allegations of the plaintiff and any documentary or oral evidence adduced by him, may either dismiss the case, or postpone the hearing of it to a future day for the attendance of any witness whom the plaintiff may wish to call, or decree the suit ex parte against the defendant.

Production by defendant.

158. If the defendant relies on any document in support of his of documents defence, he shall produce it before the Deputy Commissioner at the first hearing of the suit; and, if such document is not so produced, it shall not afterwards be admitted, unless the Deputy Commissioner, for sufficient reasons to be recorded in writing, thinks fit to admit it.

Hearing of day to which poned.

159. If the defendant appears on any subsequent day to which the defendant on hearing of the suit may be postponed under section 157, the Deputy case is post Commissioner may, upon such conditions (if any) as to costs or otherwise as he may think proper, allow the defendant to be heard in answer to the suit as if he had appeared on the day fixed for his attendance.

Exemption of women from personal attendance.

160. A female plaintiff or defendant shall not be required to attend in person if of a rank or class which, according to the customs and manners of the country, would render it improper for her to appear in public.

Employment of agents.

161. (1) Any party to a suit before the Deputy Commissioner under this Act may employ an agent to conduct the case on his behalf; but the appointment of an agent shall not excuse the personal attendance of the plaintiff or defendant in cases where his personal attendance is required by the summons or by any order of the Deputy Commissioner.

(2) Processes served on any such agent shall be as effectual for all purposes in relation to the suit as if they had been served on the party in person; and all the provisions of this Act relating to the service of processes on a party to the suit shall be applicable to the service of

processes on such agent.

Power to grant time or adjourn hearing.

defendant.

162. The Deputy Commissioner may in any case grant time to the plaintiff or defendant to proceed in the prosecution or defence of a suit, and may also from time to time, in order to secure further evidence, or for other sufficient reason to be recorded by him, adjourn the hearing or further hearing of any case in such manner as he may think fit.

163. (1) When both parties appear in person on the day named in Examinathe summons, or upon any subsequent day to which the hearing of the tion and amination of case may be adjourned under section 162, the Deputy Commissioner [1] [may proceed to examine them, and if he examines them] either party parties or their agents or his agent may cross-examine the other. and of witnesses:

(2) If either of the parties is not bound to attend personally, any statement by agent by whom he appears [2] [may] be examined and cross-examined in

^[1] These words were substituted for the words "shall proceed to examine them, and "by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 41(1), printed in Vol. III of this Code.

^[2] The word "may" was substituted for the word "shall" by ibid, s. 41(2).

(Secs. 164-168.)

like manner as the party himself would have been if he had attended personally.

- (3) At his first appearance, or at any time before the issues are framed, the defendant may, with the leave of the Deputy Commissioner, file a written statement of his defence.
- (4) Such statement shall be verified in the manner provided in section 147.
- (5) If either of the parties produces a witness on the day aforesaid, the Deputy Commissioner may take the evidence of such witness.
- 164. (1) The examination of the parties or their agents shall be Conduct conducted according to the law for the time being in force for the and record of examiexamination of witnesses. nation.
- (2) The depositions of parties, agents and witnesses shall be recorded in English [1][***].
- 165. If the agent of either party is unable to answer any material Power to question relating to the case, which the Deputy Commissioner is of direct opinion that the party whom he represents ought to answer and is likely attendance of party to be able to answer if interrogated in person, the Deputy Commissioner whose may postpone the hearing of the case to a future day, and may direct agent that such party shall attend in person on such day;

and if such party fails to appear in person on the day appointed, material the Deputy Commissioner may decide the suit as in case of default, or question. make such other order as he may deem proper in the circumstances of the case.

166. If after the examination [2] [referred to in] section 163, and Decree when after the examination of any witness who may attend to give evidence made. on behalf of either of the parties, and after a consideration of the documentary evidence adduced, a decree can properly be made without taking further evidence, the Deputy Commissioner shall make a decree accordingly.

167. If it appears that the parties are at issue on any question upon Power to which it is necessary to hear further evidence, the Deputy Commissioner postpone shall frame issues, and shall fix a day for the examination of witnesses take and the final hearing of the suit; and the trial shall take place on that further day, unless there be sufficient reason for adjourning it, which reason evidence. shall be recorded by the Deputy Commissioner.

168. The parties shall produce their witnesses on the day of the trial; Producand, if either party requires assistance to procure the attendance of a tion of witness on such day, either to give evidence or to produce a document,

by *ibid*, s. 43.

^[1] The following words were omitted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 42, printed in Vol. III of this Code.

"or, if the Deputy Commissioner is not sufficiently acquainted with English, then in the vernacular language of the Deputy Commissioner".

[2] The words "referred to in" were substituted for the words "required by"

(Secs. 169-172.)

he shall apply to the Deputy Commissioner in sufficient time before such day to enable the witness to be summoned and to attend on that day; and, if the application be made in sufficient time as aforesaid, the Deputy Commissioner shall issue a summons requiring such witness to attend.

Procedure when neither party appears on day fixed for final hearing of suit.

- 169. (1) If, on the day fixed for the final hearing of the suit, neither of the parties appears, the case shall be struck off under the conditions provided in section 155.
- of tay (2) If, on such day, only one of the parties appears, the suit may final hearing be tried and determined, in the absence of the other party, upon such proof as may then be before the Court.

Judgment.

- 170. (1) The Deputy Commissioner shall pronounce judgment in open Court.
- (2) The judgment shall be written in English, and shall contain the reasons for the decision, and shall be dated and signed by the Deputy Commissioner at the time when it is pronounced. [1] [***]

Local inquiries.

- 171.(1) The Deputy Commissioner may, at any stage of a suit or other proceeding before him under this Act,—
 - (a) cause a local inquiry and report respecting the matter in dispute to be made by any officer subordinate to him, or by any other officer of the Government with the consent of the authority to whom such officer is subordinate, or by any other person whom the Deputy Commissioner may deem fit; or
 - (h) himself proceed to the spot and make such local inquiry in person.
- (2) The provisions of the law for the time being in force, relating to local inquiries by Commissioners under orders of Civil Courts, shall apply to any local inquiry made under clause (a) of sub-section (1), and, so far as they are applicable, also to inquiries made under clause (b) of that sub-section.
- (3) Where the Deputy Commissioner makes a local inquiry in person, he shall forthwith record on the proceedings any relevant facts which he has observed in the course of the inquiry; and such record shall be received as evidence in the suit or other proceeding aforesaid.

Payment into Court by defendant, after tender to plaintiff.

172. (1) The defendant in any suit before the Deputy Commissioner under this Act may, if he has duly tendered the same to the plaintiff before the institution of the suit, pay into Court such sum of money as he may consider to be due to the plaintiff, without paying in any costs

^[1] The following proviso was omitted from s. 170 by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 44, printed in Vol. III of this Code

Code.
"Provided that any judgment may be written in the vernacular if the Deputy Commissioner is not sufficiently acquainted with English."

(Secs. 173-175.)

incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff.

- (2) If, after such payment, the plaintiff elects to proceed with the suit, and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant; but, if the plaintiff ultimately obtains a decree for more than was paid into Court, the defendant may be charged with all costs of the suit.
- 173. (1) The defendant in any suit before the Deputy Commissioner Payment under this Act may, without having tendered the same to the plaintiff into Court before the institution of the suit, pay into Court such sum of money as defendant, he may consider to be due to the plaintiff, together with the costs (to without prior tender be fixed by the Deputy Commissioner, if necessary, as upon a suit to plaintiff. originally instituted for the amount so paid into Court) incurred by the plaintiff up to the time of such payment; and such sum shall immediately be paid out of Court to the plaintiff.

- (2) If, after such payment, the plaintiff elects to proceed with the suit, and ultimately obtains a decree for no more than was paid into Court, he may be charged with all costs of the suit incurred by the defendant subsequently to such payment; but, if the plaintiff ultimately obtains a decree for more than was paid into Court, the defendant may be charged with costs as upon a suit originally instituted for the whole amount for which the plaintiff ultimately obtains a decree, but shall have credit thereout for the amount of costs paid into Court by him in the first instance.
- 174. From the date on which any sum is paid into Court by the Prohibition defendant under section 172 or section 173, no interest shall be allowed of sums to the plaintiff on such sum, whether it be in full satisfaction of his paid into claim or falls short thereof.

175. (1) In any suit for rent under this Act, if it appears to the Power to Deputy Commissioner that the defendant has, without reasonable or ges to probable cause, neglected or refused to pay the amount due from him,

plaintiff in rent-suit.

and that he has not, before the institution of the suit, tendered such amount to the plaintiff or his agent, or, in case of refusal of the plaintiff or such agent to receive the amount tendered, has not deposited such amount in the Court of the Deputy Commissioner under section 55 before the institution of the suit,

the Deputy Commissioner may, for reasons to be recorded in writing, award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twenty-five per centum on the amount of rent decreed, as the Court may think fit, unless interest due under section 58 is decreed.

(Secs. 176-178.)

(2) Any damages so awarded, as well as the amount of rent and costs decreed in the suit, shall carry interest, from the date of decree until payment thereof, at such rate per centum as the Deputy Commissioner deems reasonable.

Power to pensation to defendant in rent-suit.

176. In any suit for rent under this Act, if it appears to the Deputy award com- Commissioner that the plaintiff has instituted the suit against the defendant without reasonable or probable cause,

> or that the defendant, before the institution of the suit, duly deposited in the Court of the Deputy Commissioner, under section 55, the full amount which the Deputy Commissioner finds to have been due to the plaintiff at the date of such deposit,

> the Deputy Commissioner may, for reasons to be recorded in writing, award to the defendant, by way of compensation, such sum, not exceeding twenty-five per centum on the whole amount claimed by the plaintiff, as the Deputy Commissioner may think fit.

Procedure party claims right to receive rent.

177. When, in any suit before a Deputy Commissioner under this where third Act between a landlord and a tenant, [1] [the tenant or a third person pleads that the right to receive the rent of the land or tenure cultivated or held by the tenant belongs to such third person on the ground that such third person, or a person through whom he claims, has actually and in good faith received and enjoyed such rent before and up to the time of the institution of the suit,

> such third person shall be made a party to the suit, and the question of the actual payment of the rent to such third person in good faith shall be inquired into, and the suit shall be decided according to the result of such inquiry:

> Provided that such decision shall not affect the right of any party, who may have a legal title to such rent, to establish such title by suit in a Civil Court, if instituted within one year from the date of the decision.

cuit for ejectment of nonoccupancy raivat or cancelment of lease of any tenant for arrears of rent.

- 178. (1) Any landlord desiring to eject a non-occupancy raiyat on the ground that he has failed to pay an arrear of rent, or to cancel the lease of any tenant on account of the non-payment of arrears of rent, may sue for such ejectment or cancelment and for the recovery of the arrears in the same suit, or may, in a suit for such ejectment or cancelment, adduce any unexecuted decree for arrears of rent as evidence of the existence of such arrears.
- (2) In all cases of suits for the ejectment of a non-occupancy raiyat for non-payment of arrears of rent, or for the cancelment of a lease for non-payment of arrears of rent, the decree shall specify the

^[1] These words were substituted for the words "the right to receive the rent of the land or tenure cultivated or held by the tenant is disputed, and such right is claimed by or on behalf of a third person" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 45, printed in Vol. III of this Code.

(Secs. 179-183.)

of the arrear; and if such amount, together with interest and costs of suit, be paid into Court within thirty days from the date of the final decree, the decree shall not be executed.

- (3) The Deputy Commissioner may, for special reasons to be recorded in writing, extend the period of thirty days mentioned in subsection (2).
- 179. If a decree is given for the grant of a lease to a raiyat, and the Power of landlord fails, for a period of three months after the date of the decree, Deputy Comto grant such lease, the Deputy Commissioner may grant a lease in con-grant lease formity with the terms of the decree, under his own hand and seal; and to raivat in default of such lease shall have the same force and effect as if granted by the landlord. landlord.

180. If a decree is given for the delivery of a counterpart engagement Procedure by a tenant to a landlord, and the tenant fails, for a period of three fails to months after the date of the decree, to deliver such counterpart, the deliver decree shall be evidence of the amount of rent claimable from such counterpart tenant, and a copy of the decree under the land. tenant, and a copy of the decree under the hand and seal of the to landlord. Deputy Commissioner shall have the same force and effect as a counterpart engagement delivered by the tenant to the landlord.

Execution of decrees and orders of the Deputy Commissioner.

181. [1] [No application for the execution of a decree or order Limitation passed by the Deputy Commissioner under this Act shall be entertained of time for unless such application be made within three years from—

application for execution.

- (a) the date on which the decree or order is signed, or
- (b) where there has been an appeal, the date of the final decree or order of the Appellate Court, or
- (c) where there has been a review of judgment, the date of the decision passed on the review.
- [2] [181A. An application for the execution of a decree for arrears Application of rent obtained by a landlord shall not be made by an assignee of the for execution decree unless the landlord's interest in the land has become and is vested of rentin the assignee.]

182. A decree or order passed by a Deputy Commissioner under this Decrees and Act may be executed either by his own Court or by any other prescribed orders by Court.

what Court to be executed.

183. Every application for the execution of a decree or order passed Form of by a Deputy Commissioner under this Act shall be in writing, shall be application for execumade in the prescribed form, and shall be verified by the applicant or tion. his agent in the form provided in section 147.

[3] This section was inserted by ibid, s. 47, 6 L. D.

^[1] These words were substituted for the words "No process of execution of any description whatsoever shall be issued on any decree or order passed by the Deputy Commissioner under this Act, except upon an application made" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 46, printed in Vol. III of this Code.

(Secs. 184-188.)

lssue of process of execution.

184. Process of execution may be issued against either the person or the property of a judgment-debtor, but shall not be issued simultaneously against both person and property.

Form of warrant of execution against person or movable property.

185. Every warrant of execution against the person or movable property of a judgment-debtor shall be in the prescribed form.

Exemptions ment and sale.

- **186.** The following particulars shall be exempt from attachment and from attach-sale in execution of any decree or order passed by a Deputy Commissioner under this Act, namely:—
 - (a) the necessary wearing apparel and bedding of the judgmentdebtor, his wife and children;
 - (b) tools and implements of husbandry, and such cattle and seed grain as may, in the opinion of the Deputy Commissioner, be necessary to enable the judgment debtor to each his livelihood as an agriculturisty
 - (c) the materials of houses and other buildings belonging to and occupied by agriculturists;
 - (d) books of account;
 - (e) any right of personal service;
 - (f) stipends and gratuities allowed to military and civil pensioners of the Government, and political pensions;
 - (g) the wages of labourers and domestic servants;
 - (h) a right to future maintenance:

Provided that nothing in this section shall be deemed to exempt the materials of houses and other buildings from attachment or sale in execution of decrees for rent.

Explanation.—The particulars mentioned in clauses (f) and (g) are exempt from attachment or sale whether before or after they are actually payable.

Indication of seized.

- 187. (1) Any movable property required to be seized under a warrant perty to be of execution shall, if practicable, be described in a list to be furnished by the judgment-creditor; but, if the creditor is unable to furnish such list, he may apply for a general seizure of the debtor's effects to the amount of the judgment and costs.
 - (2) In either case, the property to be seized shall be pointed out by the creditor or his agent to the officer entrusted with the execution of the warrant.

Duration of warrant of execution.

188. Every warrant of execution shall bear the date of the day on which it is signed by the Deputy Commissioner, and shall continue in force for such period as the Deputy Commissioner may direct, not being more than sixty days from such date.

(Secs. 189-192.)

189. Second and successive warrants of execution may be issued, Second and by order of the Deputy Commissioner, on the application of the successive warrants of judgment-creditor, after the expiration of the period fixed for the execution. continuance in force of a previous warrant.

190. (1) A warrant of execution shall not be issued upon any decree Notice when. or order without previous notice to the party against whom execution is to be given before issue applied for, if, when application for the issue of the warrant is made, of warrant a period of more than one year has elapsed from the date of the decree of execution. or order, or from the date of the last previous application for execution.

- (2) A warrant of execution shall not be issued against the heir or other representative of a deceased party without previous notice to such representative to appear and be heard.
- 191. (1) If a warrant is issued against the person of a judgment- Procedure debtor, the officer charged with the execution of the warrant shall bring ment-debtor him with all convenient speed before the Deputy Commissioner.

(2) If the decree in execution of which the judgment-debtor was arrested is a decree for money, and if he does not immediately deposit in Court the full amount specified in the warrant, or make arrangements, satisfactory to the judgment-creditor, for the payment of the same, or satisfy the Deputy Commissioner that he has no present means of paying the same,

the Deputy Commissioner shall send him to the civil jail, there to remain for such time as may be directed by warrant addressed to the keeper of the jail, unless in the meantime he pays the said amount:

Provided that no judgment-debtor shall be imprisoned in execution of a decree under this Act for a longer period than six months or (if the decree is for the payment of a sum of money not exceeding fifty rupees) six weeks.

(3) If the decree in execution of which the judgment-debtor was arrested is a decree for the delivery of papers or accounts, and if the papers or accounts are not immediately delivered by him to the Deputy Commissioner,

the Deputy Commissioner may commit him to the civil jail, there to remain for such time, not exceeding six months, as the Deputy Commissioner may direct, unless in the meantime he delivers the papers or accounts according to the terms of the decree.

- 192. (1) When any judgment-debtor has been discharged from the Further civil jail, he shall not be imprisoned a second time under the same decree proceedings after or order.
- (2) If the amount due under such decree or order does not exceed from jail. fifty rupees, the Deputy Commissioner may declare such discharged person to be absolved from liability thereunder.

discharge

(Secs. 193-196.)

(3) In other cases the discharge shall not extinguish the liability of the discharged person under such decree or order, or exempt property belonging to him from attachment in execution thereof.

Diet-money for subsistence

- 193.(1) Any person who applies for a warrant of execution against the person of a judgment-debtor shall deposit in Court, at the time of of prisoners, the issue of the warrant, diet-money for thirty days, at such rate as the Deputy Commissioner may direct, for the subsistence of the prisoner.
 - (2) The said person shall also pay diet-money, at the same rate, before the commencement of each succeeding month of the imprisonment; and, if he fails to make any such payment, the prisoner shall be discharged.
 - (3) All diet-money spent in providing subsistence for any prisoner shall be added to the costs in the suit; and any diet-money not so spent shall be returned to the person who paid it.

Execution of decree or order for re-instatement of cultivator.

- 194. (1) If the decree or order is for the ejectment of any cultivator from land occupied by him, or for the re-instatement of any cultivator ejectment or in the occupancy of land from which he has been ejected, the decree or order shall be executed by giving the possession or occupancy of the land to the person entitled by the decree or order to such possession or occupancy.
 - (2) If any opposition to the execution of the order for giving such possession or occupancy is made by the party against whom the order is made, the Deputy Commissioner shall, in the exercise of his powers as a Magistrate, give effect to the order.

Execution of decree or order for cancelment

of lease, for for re-in statement of

tenant not being an actual cultivator.

estate or tenure.

- 195. If the decree or order is for the cancelment of any lease or the ejectment of any tenant (not being an actual cultivator), or for the re-instatement of any tenant (not being an actual cultivator) in the ejectment, or possession of a tenancy from which he has been ejected, the decree or order shall be executed-
 - (a) by proclaiming its substance to the cultivators or other occupants of the tenancy by beat of drum, or
 - (b) by notification reciting the substance of the decree or order and affixed in some conspicuous place within, or adjacent to, the tenancy, or
 - (c) in such other manner as may be prescribed.

196. If a decree is given by the Deputy Commissioner under this Execution of decree for Act, in favour of a sharer in a joint undivided estate or tenure, for money rent given in favour of due to him on account of his share of the rent of any tenure comprised sharer in in such undivided estate or tenure, undivided

application for the sale of such tenure shall not be received unless execution has first been taken out against any movable property which the judgment-debtor may possess within the district in which the suit was

(Secs. 197-200.)

instituted, and unless the sale of such property (if any) has proved insufficient to satisfy the decree;

and such tenure may then, with the previous sanction of the Commissioner, but not otherwise, be sold, in execution of the decree, in the manner in which any other immovable property may be sold in execution of a decree for money under the provisions of clause (b) of section 210.

197. When one or more co-sharer landlords applies or apply for the Execution of execution of a decree obtained in a suit instituted under clause (b) of obtained by section 142, by the sale of a tenure or holding, the Court executing such a co-sharer landlord. decree shall, before proceeding to sell the tenure or holding, give notice of the application for execution to the other co-sharers.

198. In the execution of any decree or order by the Deputy Execution Commissioner under this Act for the payment of money, not being money immovable due or recoverable as an arrear of rent.

property in

if satisfaction of the decree or order cannot be obtained by execution cases, if against the person or movable property of the debtor within the district judgment not satisfied. in which the suit was instituted,

the judgment-creditor may apply for execution against any immovable property belonging to such debtor;

and such immovable property may, with the sanction of the Commissioner, but not otherwise, be brought to sale in the manner provided in clause (b) of section 210.

Sales in execution of decrees of the Deputy Commissioner.

199. (1) For the purpose of executing a warrant of execution issued Notification of intended by the Deputy Commissioner under this Chapter against the movable sale of property of a judgment-debtor, the officer charged with the execution property, of the warrant shall prepare a list of the property pointed out by the and custody judgment-creditor; and shall publish a proclamation specifying the day of property. upon which the sale is intended to be held, and a copy of the said list, at the intended place of sale and at the residence of the debtor.

- (2) A copy of the said list and proclamation shall be transmitted to the Deputy Commissioner, and shall be affixed in his office.
- (3) Until the day of sale, the said property shall remain in the custody of the officer executing the warrant [1] [or of some other person to whom such officer by a writing under his hand commits the custody thereof. Such person shall be deemed to be a public servant within the meaning of the Indian Penal Code].

45 of 1860.

200. No sale of any movable property (other than perishable Interval property) seized in execution under this Chapter shall be made until the seizure and

[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act. 1920 (B. & O. Act 6 of 1920), s. 48, printed in Vol. III of this Code.

(Secs. 201-206.)

expiration of a period of ten days after the day on which the property was so seized.

Place and manner of sale.

- 201. (1) Such sale shall be held at the place where the property is deposited, or at the nearest market or other place of public resort if the officer executing the warrant thinks it is likely to sell there to better advantage.
- (2) The property shall be sold by public auction, in one or more lots as the officer executing the warrant may think advisable; and if the judgment-debt, and the costs of the execution and sale, are realized by the sale of a portion of the property, the execution shall immediately be withdrawn with respect to the remainder.

Prohibition of purchase by officers.

202. Officers executing warrants for the sale of property under this Chapter, and all persons employed by, or subordinate to, such officers, are prohibited from purchasing, either directly or indirectly, any property sold by such officers.

Postponement of sale if fair price be not offered.

203. If, on the property being put up for sale, no price which the officer executing the warrant considers fair is offered for it, and the owner of the property, or some person authorized to act on his behalf, applies to have the sale postponed until the next day, or the next market day if a market be held at the place of sale or in the vicinity, the sale shall be postponed until such day, and shall then be completed at whatever price may be offered for the property.

Payment of purchasemoney, and delivery of property to purchaser.

- 204. (1) The price of every lot shall be paid at the time of sale, or as soon thereafter as the officer executing the warrant may direct; and, in default of such payment, the property shall again be put up and sold.
- (2) When the purchase-money has been paid in full, the officer executing the warrant shall deliver the property to the purchaser, with a certificate describing the property and stating the price paid.

Application of proceeds of sale.

- **205.** (1) From the proceeds of the sale, the officer executing the warrant shall make a deduction, at the rate of one anna in the rupee, on account of the costs of the sale, and shall transmit the amount so deducted to the Deputy Commissioner in order that it may be credited to the Government.
- (2) The said officer shall deal with the rest of the proceeds in the prescribed manner.

Procedure where third party claims interest in property seized.

- **206.** (1) If, before the day fixed for the sale, a third party appears before the Deputy Commissioner and claims a right or interest in any of the movable property seized in execution, the Deputy Commissioner shall examine such party or his agent according to the law for the time being in force relating to the examination of witnesses; and, if he sees sufficient reason for so doing, may stay the sale of such property.
- (2) The Deputy Commissioner shall, after taking evidence, adjudicate upon such claim, and shall make such order thereupon as he thinks fit.

(Secs. 207-208.)

- (3) If the daimant fails to establish his right to the property seized in execution, the Deputy Commissioner may, by his order under subsection (2), award to the judgment-creditor against the claimant, in addition to the costs of the proceedings, such sum as the Deputy Commissioner may consider sufficient to cover any loss of interest or any other damage which the judgment-creditor has sustained by reason of the postponement of the sale.
- (4) The party against whom any order is passed by the Deputy Commissioner under this section may, at any time within one year from the date of the order, bring a suit in the Civil Court to establish his right:

Provided that, if the property has been sold, the suit shall not be for the recovery of the property, but for damages against the judgmentcreditor by whom the property was brought to sale.

- 207. No irregularity in publishing or conducting a sale of movable Irregulariproperty under a warrant of execution issued under this Chapter shall ties not
 vitiate such sale; but nothing contained in this section shall bar any
 person who sustains damage by reason of any such irregularity from
 recovering damages by suit in the Civil Court, if instituted within one
 year from the date of the sale.
- 208. (1) When a decree passed by the Deputy Commissioner under Sale of this Act is for an arrear of rent due in respect of a tenure or holding, tenure or the decree-holder may apply for the sale of such tenure or holding, and execution the tenure or holding may thereupon be brought to sale, in execution of of decree the decree, according to the provisions for the sale of under-tenures confor tained in the Bengal Rent Recovery (Under-tenures) Act, 1865;[1] and arrears of the provisions of that Act, except sections 12, 13, 14 and 15 thereof, shall, as far as may be, apply to such sale:

Ben. Act 8 of 1865.

Provided that the purchaser of a tenure at any such sale shall not be entitled to annul any lease, right or tenancy referred to in clauses (a) to (e) of section 14 of this Act:

Provided also that the Commissioner may, by order, in any case in which he may consider it desirable so to do,—

- (a) prohibit the sale of any tenure or portion thereof, or
- (b) stay any such sale for any period specified in the order:

Provided also that any sale of a resumable tenure under this section shall not affect the right of the grantor or his successor in title to resume such tenure, but shall be made subject to such right.

(2) When a warrant of execution has been issued under this Chapter against the person or movable property of the judgment-debtor, no

(Sec. 209.)

application shall be received under sub-section (1) while such warrant remains in force.

Disposal of roceeds of holding under section 208, the following procedure shall be observed, ection 208.

- (a) there shall be paid to the decree-holder the costs incurred by him in bringing the tenure or holding to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after those sums have been paid, there shall be paid to the decree-holder therefrom any rent which may have accrued due to him in respect of the tenure or holding between the institution of the suit and the date of the sale; and
- (d) the balance (if any) remaining after the payment of rent referred to in clause (c) shall, upon the expiration of two months from the [1][date] of the sale, be paid to the judgment-debtor upon his application:

Provided that, where a tenure or holding has been sold in execution of a decree obtained by one or more co-sharer landlords in a suit instituted under clause (b) of section 142,—

- (i) payment of the amount due under such decree shall, notwithstanding anything contained in clause (b) of this section, be made to the decree-holder and to the other cosharer landlords in proportion to the amount found to be due to each, and
- (ii) if there remains a balance, payment of any rent which may have accrued due in respect of the tenure or holding between the institution of the suit and the date of the sale shall, notwithstanding anything contained in clause (c), but subject to the determination, in the manner and with the effect mentioned in sub-section (2), of any dispute as to their respective rights to receive such rent, be made to the said decree-holder and other co-sharer landlords in proportion to their respective shares in the tenure or holding.
- (2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c), the Deputy Commissioner shall determine the dispute, and the determination shall have the force of a decree.

^[1] The word "date" was substituted for the word "confirmation" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 49, printed in Vol. III of this Code.

(Secs. 210-211.)

- 210. (1) If, after the sale of a tenure or holding in pursuance of Sale of section 208, any portion of the amount decreed remains due, process property in may be applied for against any other property, movable or immovable, execution of belonging to the judgment-debtor.
 - decree for arrears of
- (2) Notwithstanding anything contained in sub-section (1), a decree-rent of holder may, with the permission of the Deputy Commissioner, granted tenure or holding. for reasons to be recorded in writing, proceed against any other property, movable or immovable, of the judgment-debtor, without first making application for the sale of the tenure or holding in respect of which the arrear has accrued.
- (3) Property referred to in sub-sections (1) and (2) may be brought to sale—
 - (a) if movable, in the manner provided in sections 199 to 205,
 - [4][(b) if immovable, in the manner provided by Order XXI, rules 11(3), 13, 14, 54 (with which shall be read section 64 of the said Code), 55, 58 to 73 inclusive, 83 to 88 inclusive and 91 to 103 inclusive of the First Schedule to the Code of Civil Procedure, 1908, the words and figures 'rule 89' and 'rule 90' occurring in rule 92 being understood as section 212, sub-section (1), and section 213, sub-section (1), respectively of this Act:

5 of 1908.

Provided that where anything contained in the said provisions is inconsistent with anything contained in sections 212 to 214 inclusive, the latter shall prevail.

- [2][(4) When immovable property has been brought to sale in the manner provided by sub-section (3)(b), and such sale has become absolute, the property shall deemed to have vested in the purchaser from the time when the property is sold and not from the time when the sale becomes absolute.]
- 211. (1) If, before the day fied for the sale of any tenure or holding Procedure in pursuance of section 208, a third party appears before the Deputy where third party claims Commissioner and alleges that he, and not the person against whom the to be in decree has been obtained, was in lawful possession of, or had some lawful posinterest in, the tenure or holding when the decree was obtained,

the Deputy Commissioner shall examine such party according to holding. the law for the time being in force relating to the examination of witnesses; and if he sees sufficient reason for so doing, and if such party

^[1] This clause was substituted for the original clause (b) by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 50(1), printed in Vol. III of this Code.

^[2] This sub-section was inserted by *ibid*, s. 50(2), printed in Vol. III of this Code.

(Sec. 212.)

deposits in Court or gives security for the amount of the decree, the Deputy Commissioner shall stay the sale, and shall, after taking evidence, adjudicate upon the claim:

Provided that no such adjudication shall be made if the Deputy Commissioner considers that the claim was designedly or unnecessarily delayed:

Provided also that no transfer of a tenure shall be recognized unless it has been registered in the office of the landlord or sufficient cause for non-registration is shown to the satisfaction of the Deputy Commissioner.

- [1][(1A). (a) If the Deputy Commissioner gives judgment in favour of such third party, the amount of the decree shall be satisfied from the deposit or security aforesaid, and the Deputy Commissioner shall in his judgment set out the portion, if any, of the said amount and of his costs in the proceedings which such third party is entitled to recover from each of the other persons having an interest in the tenure or holding, and such sum shall be deemed to be money (not being due or recoverable as an arrear of rent) payable under an order of the Deputy Commissioner under this Act.
 - (b) If the Deputy Commissioner gives judgment against such third party, the sale shall proceed, and such third party shall, upon payment of the costs, if any, allowed against him, be entitled to the return of the deposit or cancellation of the security, as the case may be.]
- (2) The party against whom judgment is given by the Deputy Commissioner under sub-section (1) may, at any time within one year from the date of the judgment, bring a suit in the Civil Court to establish his right [2][and if the sale has been held, to have it set aside on payment by him of the amount of the decree.]

Application to set aside sale of immovable property, on deposit of debt and compensation to purchaser.

- 212. (1) When any immovable property has been sold under this Chapter in execution of a decree, any person who owned such property immediately before the sale, or who claims an interest therein under a title lawfully acquired before the sale, may, at any time within a period of thirty days from the date of the sale, apply to have the sale set aside on his depositing in the Court of the Deputy Commissioner,—
 - (a) for payment to the purchaser—a sum equal to five per centum of the purchase-money, and
 - (b) for payment to the decree-holder—the amount specified in the proclamation of sale as that for the recovery of which the

^[1] This sub-section was inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & C. Act 6 of 1920), sec. 51(1), printed in Vol. III of this Code.
[2] These words were added by *ibid*, s. 51(2).

(Secs. 213-213A.)

sale was ordered, less any amount which may, since the date of such proclamation [1][of] sale, have been received by the decree-holder:

Provided that, if a person applies under section 213 to set aside the sale of his immovable property, he shall not be entitled to make an

application under this section.

- (2) If the said deposits are made within the said period, the Court shall pass an order setting aside the sale, [2][and the purchaser shall be entitled to an order for the payment of the aforesaid sum equal to five per centum of the purchase-money and to an order for repayment of his purchase-money, with or without interest as the Court may direct, against any person to whom it has been paid.]
- 213. (1) When any immovable property has been sold under this Application Chapter in execution of a decree, the decree-holder or the person who to set aside owned such property immediately before the sale may [3][at any time immovable within a period of thirty days from the date of the sale] apply to the property on Deputy Commissioner to set aside the sale on the ground of a material irregularity irregularity [3][or fraud] in publishing or conducting it; but no sale or fraud. shall be set aside on the ground of irregularity unless the applicant proves to the satisfaction of the Deputy Commissioner that he has sustained substantial injury by reason of such irregularity:

Provided that, if a person applies under section 212 to set aside the sale of his immovable property, he shall not be entitled to make an application under this section.

(2) If an application be made under this section, and if the objection be allowed, the Deputy Commissioner shall pass an order setting aside the sale.

[4][213A. (1) Where a decree for rent is set aside, any sale of Sale in immovable property in execution of such decree shall be deemed to be execution set aside, and the Court of first instance shall restore the judgment-debtor aside when to such ownership, and if he is not in possession, to such possession of rent decree the immovable property as he had at the date of the sale, and shall upon and restorathe application of any person affected by the sale or the reversal thereof, status quo pass such further orders as will, so far as may be, place the parties, ante. including the auction-purchaser and his successor in interest, if any, in the position which they would have occupied but for such decree; and for this purpose the Court may make any orders, including orders for

^[1] The word "of" was substituted for the word "and" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 52(1), printed in Vol. III

^[2] These words were substituted for the words "and the provisions of section of this Code. 315 of the Code of Civil Procedure shall apply in the case of a sale so set aside

by ibid, s. 52(2).
[8] These words were inserted by ibid, s. 53. [4] This section was inserted by ibid, s. 54.

(Secs. 214-215.)

the refund of costs, for the payment of interest, damages, compensation and mesne profits which are properly consequential on such reversal.

(2) No suit shall be instituted in any Court for the purposes of obtaining any restitution or other relief which could be obtained by application under sub-section (1).]

Grounds on which suit or application to set aside sale may be brought.

- [1][214. No suit or application shall be entertained by any Court to set aside or to modify the effect of—
 - (a) any sale made under this Chapter, save under section 211, section 212 or section 213 or on the ground of fraud or want of jurisdiction, or
 - (b) an order under section 212, sub-section (2), or section 213, sub-section (2), setting aside a sale.

Explanation.—Where property has been sold under the provisions of sub-section 3(b) of section 210, this section does not prohibit an application under rule 72(3) or rule 91 nor a suit under rule 63, or rule 103 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908, if such suit 5 of 1908, is instituted within one year of the date of the adverse order.]

Appeals.

Appeal from orders of Deputy Commissioners.

215. (1) All orders passed by a Deputy Commissioner under the foregoing provisions of this Act, not being—

(a) judgments in suits, or

- (b) orders passed in the course of suits and relating to the trial thereof, or
- (c) orders passed after decree and relating to the execution thereof, or
- (d) orders passed under section 206 or section 211,

shall be appealable—

(i) to the Commissioner, or

- (ii) if passed by a Deputy Collector exercising powers of a Deputy Commissioner—to the Deputy Commissioner.
- (2) No judgment of a Deputy Commissioner in any suit, and no order of a Deputy Commissioner passed in any suit and relating to the trial thereof, or after decree and relating to the execution thereof, shall be open to revision or appeal otherwise than as expressly provided in this Act.

^[1] This section was substituted for the original section 214 by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 55, printed in Vol. III of this Code.

(Secs. 216-220.)

(3) Orders passed after decree and relating to the execution thereof [1] [(except orders passed under section 206, or section 211, or under section 212, sub-section (2) setting aside a sale, or under rule 60, rule 61 or rule 62 of Order XXI of the First Schedule to the Code of Civil Procedure, 1908) 72 and orders passed under section 213A shall be appealable to the Court to which an appeal from the decree itself would lie.

[8] [5 of 1908.7

- 216. Every appeal under section 215 shall be presented to the Limitation Commissioner or the Deputy Commissioner, as the case may be, within of appeals from such thirty days from the date of the order. orders.
- 217. Orders passed by the Commissioner or Deputy Commissioner Bar to in appeals preferred under section 215 shall not be open to any further further appeal; but the Board or (in the case of appeals decided by the Deputy with Commissioner) the Commissioner may call for any case and pass such proviso for revision by orders thereon as it or he may think proper. Board or

sioner. 218. (1) In suits referred to in clause [4][(2) (c)] or clause (7) of Appeal in section 139, tried and decided by a Deputy Commissioner, if the amount certain sued for, or the value of the property claimed, does not exceed one suits. hundred rupees, the judgment of the Deputy Commissioner shall be final, and not open to revision or appeal except as provided in sub-section (2), unless in any such suit a question relating to a title to land, or to some interest in land, as between parties having conflicting claims thereto, has been determined by the judgment, in which case the judgment shall be open to appeal in the manner provided in section 224.

(2) When any such suit in which, if tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner would be final, is tried and decided by a Deputy Collector, an appeal from the judgment of the Deputy Collector shall lie to the Deputy Commissioner.

219. Every petition of appeal to the Deputy Commissioner under Appeal to section 218, sub-section (2), shall be presented within thirty days from Deputy Comthe date on which the decree appealed against was signed.

220. (1) The Deputy Commissioner or the Commissioner as the Appeal case may be, shall fix a day for hearing the appeal, and shall cause notice when to of the same to be served on the respondent.

missioner when to be presented.

Commis-

56(2).

[3] The letter, word and figure "V of 1908" were substituted for the letters, words and figures "XIV of 1882" by *ibid*, s. 2(3).
[4] The figure, brackets and letter "(2) (c)," were substituted for the brackets and figure "(3)" by ibid, s. 57.

^[1] These words were substituted for the words and figures "except orders passed under section 205 or section 211 of this Act or under section 280, section 281 or section 282 of the Code of Civil Procedure," by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 56(1) in Vol. III of this Code.

[2] The words "and orders passed under section 213A" were inserted by ibid, s.

(Secs. 221-224.)

- (2) If, on the day fixed for hearing the appeal, or on any other day to which the hearing may be adjourned, the appellant does not appear in person or by agent, the appeal shall be dismissed for default.
- (3) If on such day the appellant appears and the respondent does not appear in person or by agent, the appeal shall be heard ex parte.

Re-admission of appeal.

221. If an appeal is dismissed for default of prosecution, the appellant may, within thirty days from the date of the dismissal, apply to the Deputy Commissioner or the Commissioner, as the case may be, for the re-admission of the appeal; and, if it is proved to the satisfaction of the Deputy Commissioner or the Commissioner, as the case may be, that the appellant was prevented by any sufficient cause from appearing when the appeal was called on for hearing, the Deputy Commissioner or the Commissioner, as the case may be, may re-admit the appeal.

Re-hearing of appeal on application of respondent against whom ex parte decree passed.

222. When an appeal is heard ex parte in the absence of the respondent, and judgment is given against him, he may apply to the Appellate Court to re-hear the appeal; and, if he satisfies the Court that notice was not duly served or that he was prevented by sufficient cause from attending when the appeal was called on for hearing, the Court may re-hear the appeal on such terms as to costs or otherwise as the Court thinks fit to impose upon him.

Judgment in appeal.

223. After hearing the appeal, the Deputy Commissioner or the Commissioner, as the case may be, shall give judgment in the manner provided in section 170 for giving judgment in original suits.

Appeal to Judicial Commissioner or High Court.

- 224. (1) In all suits before a Deputy Commissioner under this Act, except—
 - (a) suits in which, when tried and decided by a Deputy Commissioner, the judgment of the Deputy Commissioner is declared by [1][this Act] to be final, and
 - (b) suits in which, when tried and decided by a Deputy Collector, an appeal is allowed by section 218, sub-section (2), to the Deputy Commissioner,

an appeal from the judgment of the Deputy Commissioner or Deputy Collector shall lie to the Judicial Commissioner, unless the amount or value in dispute exceeds five thousand rupees, in which case the appeal shall lie to the High Court.

[2][(2) Save where otherwise expressly provided in this Act or by any other law for the time being in force, a second appeal shall lie to the

^[1] The words "this Act" were substituted for the words, figures and brackets "section 218, sub-section (1)" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 58(1), printed in Vol. III of this Code.

[2] This sub-section was substituted for the original sub-section (2) by ibid, s. 58(2).

(Secs. 225-227.)

High Court from any appellate decree passed by the Judicial Commissioner under this Chapter, or from any order passed by him on appeal under section 215, sub-section (3), on any of the following grounds, namely:-

- (a) the decision being contrary to law or to some usage having the force of law;
- (b) the decision having failed to determine some material issue of law or usage having the force of law;
- (c) a substantial error or defect in the procedure provided by this Act which may possibly have produced error or defect in the decision of the case upon the merits;

and the provisions of Part VII and of Order XLI of the First Schedule to the Code of Civil Procedure, 1908, shall apply, so far as may be, to such appeals.

225. (1) Where, in analogous suits, some appeals have been Hearing of presented to the Deputy Commissioner and others to the Judicial appeals by Judicial Commissioner, the Judicial Commissioner may, on the application of any Commisof the parties, transfer to his own Court the appeals pending in the sioner, instead of Court of the Deputy Commissioner.

by Deputy Commis-

(2) Where, in analogous suits, some appeals lie to the Deputy Commissioner and others to the Judicial Commissioner, a plaintiff or defendant whose appeal would ordinarily lie to the Deputy Commissioner may, if an appeal in any such suit has been presented by any other plaintiff or defendant to the Judicial Commissioner and admitted, present his appeal to the Judicial Commissioner instead of to the Deputy Commissioner, and the Judicial Commissioner may hear and decide the same.

226. Appeals to the Judicial Commissioner or to the High Court Limitation under this Chapter shall be presented within the time provided for the of appeal to presentation of appeals to a District Judge or the High Court, as the Commiscase may be, under the Code of Civil Procedure, [1][1908,] by the law sioner or High Court. for the time being in force for the limitation of appeals.

- 227. (1) No appeal by a plaintiff or defendant shall lie from Power to set a judgment or order passed against him by default for non-appearance, aside judgment whether such judgment or order were given under section 155, section or order 156, section 157 or section 169.
 - passed ex parte
- (2) If the party against whom any such judgment or order has been by default. given appears, either in person or by agent,-
 - (a) if a plaintiff, within thirty days from the date of the Deputy Commissioner's order, and,

|2||5 of 1908.7

[2][5 of 1908.7

^[1] The figures "1908" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2(3), printed in Vol. III of this Code.

[2] The letter, word and figures "V of 1908" were substituted for the letters, word and figures "XIV of 1882" by ibid.

(Secs. 228-229A.)

- (b) if a defendant, within thirty days after any process for enforcing the judgment has been executed,
 - or at any earlier period, and shows sufficient cause for his previous non-appearance, and satisfies the Deputy Commissioner that there has been a failure of justice, the Deputy Commissioner may, upon such terms and conditions as to costs or otherwise as he may think proper, revive the suit and set aside the judgment or order.
- (3) No judgment or order shall be altered or set aside under subsection (2) without previously summoning the opposite party to appear and be heard in support of it.

Order to set aside judgment final, but rejection of application appealable.

228. In all cases in which the Deputy Commissioner, under section 227, passes an order setting aside a judgment or order, the order shall be final; but, in all appealable cases in which the Deputy Commissioner, under that section, rejects an application for setting aside a judgment to set aside or order, an appeal shall lie from the order of rejection to the tribunal to which the final decision in the suit would be appealable, provided that the appeal be preferred within the time allowed for an appeal from such final decision.

229. The provisions of [1][rule 22 of Order XLI of the First [2] [5 of Application of rule 22 of Schedule to the Code of Civil Procedure, 1908] shall, so far as applicable, 1908.] Order XLI of the First apply to all appeals under this Act from decisions of the Deputy Schedule to Commissioner [8] [or of a Revenue-officer.] Civil

[4][CHAPTER XVIA.

SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER THE BIHAR AND ORISSA PUBLIC DEMANDS RECOVERY ACT, 1914.

Recovery of arrears of rent under the certificate procedure in certain CRRAS.

Procedure.

229A. (1) Any landlord (other than the Government) whose land is situate in an area for which a record-of-rights has been prepared and finally published, and in which such record is maintained, may apply to the Local Government, through the Deputy Commissioner of the district in which his land is situate, for the application of the procedure prescribed by the Bihar and Orissa Public Demands Recovery Act, B. & O. 1914,[5] to the recovery of arrears of rent which he alleges are, or may Act 4 of 1914. become, due to him for lands in such area.

(2) The Local Government may reject any such application, or may allow it subject to such terms and conditions as it may see fit to

[5] Printed in Vol. III of this Code.

^[1] These words, letters and figures were substituted for the words and figures "section obl of the Code of Civil Procedure" by the Chota Nagpur Tenancy (Amendment), Act, 1920 (B. & O. Act 6 of 1920), s. 59(1), printed in Vol. III of this Code.

[2] The letter, word and figures "V of 1908" were substituted for the letters, word and figures "XIV of 1882," by ibid, s. 2(2).

[3] The words "or of a Revenue-officer" were added by ibid, s. 59(2).

[4] This Chapter was inserted by ibid, s. 60.

B. & O. Act 4 of

7 of 1870.

1914.

(Sec. 229A.)

impose, and may at any time add to or vary any terms or conditions so imposed, or withdraw its allowance of the application, without, in any of these cases, assigning any reason for its action.

- (3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed, to the Certificate-officer for the recovery of any arrears of rent which he alleges are due to him from any tenant.
- (4) Every such requisition shall be signed and verified by the land-lord making it, in the manner prescribed by rule 1 in Schedule II to the Bihar and Orissa Public Demands Recovery Act, 1914,[1] as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870,[2] in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.
- (5) On receipt of any such requisition, the Certificate-officer may, in accordance with such rules as the Local Government may prescribe in this behalf, and if he is satisfied that the arrear is due, sign a certificate in the prescribed form stating that the arrear is due, and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office:

Provided that-

- (a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which a suit has been instituted in the Court of the Deputy Commissioner for the alteration of the rent payable by the tenant, or the determination of his status as a tenant, in respect of the period during which it is alleged in the requisition made under sub-section (3) that the arrears of rent sought to be recovered have accrued; and
- (b) if, after the signing of a certificate, it is found that such a suit was instituted in the Court of the Deputy Commissioner before the certificate was signed, such certificate shall be cancelled.
- (6) The person in whose favour any certificate is signed under subsection (5) shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and responsibility, and not otherwise.

57

E L. D.

^[1] Printed in Vol. III of this Code.
[2] Printed in General Acts, 1834-72, Ed. 1928, p. 286.

(Secs. 230-230A.)

- (7) The Bihar and Orissa Public Demands Recovery Act, 1914,[1] B. & O. with such restrictions and modifications (if any) as may be prescribed, 1914. shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5).
- (8) No landlord shall, during the pendency of any proceedings under this section, institute a suit for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3); and, subject to the provisions of section 43 of the Bihar and Orissa Public Demands Recovery Act, 1914,[1] no tenant shall, after the signing of B. & T. any certificate against him under sub-section (5) of this section, institute 1914. a suit before, or make an application to the Deputy Commissioner for the alteration of the rent payable by him, or the determination of his status as a tenant, in respect of the period during which the arrears of rent for which such certificate was signed, have accrued.
- (9) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collects or collect his or their share or shares of the rent separately; and, where the Certificate-officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate.
- (10) Nothing in this section shall apply to a Mundari khunt-kattidari tenancy, notwithstanding that it constitutes, or is situate in, an area described in sub-section (1).]

CHAPTER XVII.

LIMITATION.

Application of the Indian Limitation Act, 1908. Special rule of limitation in certain applications and suits before a Revenue-officer.

- 230. The provisions of the [2]Indian Limitation Act, [3][1908], 9 of 1908. shall, so far as they are not inconsistent with this Act, apply to all suits, appeals and applications under this Act.
- [4][230A. Notwithstanding any of the provisions of the Indian Limitation Act, 1908[2], where an application under sub-section (3) of section 85 has been made or a suit under section 87, section 111 (8), section 130 or section 252 has been instituted within three months from the date of final publication of the record-of-rights, and any person is thereafter added or substituted as a party to such application or suit, the application or the suit shall, as regards such person, be deemed for the

[1] Printed in Vol. III of this Code.

[2] Printed in General Acts, 1898-1909, Ed. 1928, p. 334.
[3] The figures "1908" were substituted for the figures "1877" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2(7), printed in Vol. III of this Code.

[4] This section was inserted by ibid, s. 61.

(Secs. 231-236.)

purpose of limitation to have been made or instituted on the date upon which it was made or instituted by the original applicant or plaintiff against the original defendant.

231. All suits and applications instituted or made under this Act, General rule for which no period of limitation is provided elsewhere in this Act, shall of limitation. be commenced and made respectively within one year from the date of the accruing of the cause of action:

Provided that there shall be no period of limitation for applications under section 28, 31, 34, 50, 61, 75, 105 or 121.

232. Suits and applications for the delivery of leases or counterpart Limitation engagements, or for the determination of the rates of rent payable for of suits and applications lands held by a tenant, may be instituted and made, respectively, at any for grant of leases, etc. time during the tenancy.

233. Suits for the ejectment of an occupancy-raiyat or a non-Limitation occupancy-raiyat on any of the grounds mentioned in section 22 or in of certain clauses (b) and (c) of section 41 shall be instituted within two years ejectment. from the date of the misuse or breach complained of.

234. Suits, and applications under section 244, for the recovery of Limitation arrears of rent, shall be instituted within three years from the end of the applications agricultural year in which the arrear became due.

for arrears of rent.

235. (1) Where a landlord has instituted a suit against a tenant or Successive applied for a certificate under section 240 against a Mundari khunt-suits or kattidar, for the recovery of any rent of his tenancy, the landlord shall for recovery not institute another suit or apply for another such certificate against of rent. him for the recovery of any rent of that tenancy until after six months from the date of the institution or making of the previous suit or application.

(2) Nothing in sub-section (1) shall prohibit a fresh suit for rent when a former suit has been withdrawn with leave to sue again, or when a claim has been rejected under section 154, or when a case has been struck off under section 155 or section 169.

236. Suits for the recovery of money in the hands of an agent, or Limitation for the delivery of accounts or papers by an agent, may be brought at of suits any time during the agency, or within one year after the determination agents for of the agency, of such agent:

money, accounts or

Provided that, if the person having the right to sue has, by fraud, papers. been kept from knowledge of the receipt of any such money by the agent, or if any fraudulent account has been rendered by the agent, the suit may be brought within one year from the time when the fraud first became known to such person; but no such suit shall in any case be brought at any time exceeding three years from the termination of the agency.

(Secs. 237-240.)

Limitation of applications for recovery of possession of holding.
Limitation of suits or applications by village-headmen for recovery of possession.

- 237. Applications for the recovery of possession of a holding, or any portion thereof, from which an occupancy-raiyat has been unlawfully ejected must be instituted within three years from the date of such ejectment.
- Limitation of suits or applications for recovery of possession of his office or agricultural land by a [1][village-headman] against a landlord or any person holding by virtue of any assignment from a landlord, must be headmen for instituted or made within three years from the date of dispossession.

CHAPTER XVIII.

Special provisions with respect to Mundari khunt-kattidars.

Application of preceding sections to Mundari khunt-kattidari tenancies. Restrictions on transfer of Mundari khunt hattidari tenancies.

- Application of preceding sections as are applicable to Mundari sections to Mundari khunt-kattidars shall, in their application to such persons and their tenancies, be read subject to the provisions of the following sections in this chapter.
 - 240. (1) No Mundari khunt-kattidari tenancy or portion thereof shall be transferable by sale, whether in execution of a decree or order of a Court or otherwise:

Provided that, when a decree or order has been made by any Court for the sale of any such tenancy or portion thereof, in satisfaction of a debt due under a mortgage (other than a usufructuary mortgage) which was registered before the commencement of the Chota Nagpur Tenancy Ben. Act 5 (Amendment) Act, 1903,[2] the sale may be made with the previous of 1903. sanction of the Deputy Commissioner.

- (2) If the Deputy Commissioner refuses to sanction the sale of any such tenancy or portion thereof under the proviso to sub-section (1), he shall attach the land and make such arrangements as he may consider suitable for liquidating the debt.
- (3) No mortgage of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a bhugut bandha mortgage for a period, expressed or implied, which does not exceed or cannot in any possible event exceed seven years.
- (4) No lease of a Mundari khunt-kattidari tenancy or any portion thereof shall be valid, except a lease of one or other of the following kinds, namely:—
 - (a) mukarrari leases of uncultivated land, when granted to a Mundari or a group of Mundaris for the purpose of enabling

^[1] The expression "village-headman" was substituted for the words "headman of a village or group of villages, whether known as manki or pradhan or manjhi or otherwise" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 62, printed in Vol. III of this Code.

[2] Repealed by this Act, see section 2 and Schedule A.

Act 5

(Sec. 241.)

the lessees or the male members of their families to bring suitable portions of the land under cultivation;

(b) leases of uncultivated land, when granted to a Mundari cultivator to enable him to cultivate the land as a raiyat.

Explanation.—The expression "uncultivated land," as used in this sub-section, includes land which, though formerly cultivated, is not, at the time the lease is granted, either under cultivation or in the occupation of the lessee for purposes of cultivation.

- (5) Where a Mundari khunt-kattidari tenancy is held by a group of Mundari khunt-kattidars, no bhugut bandha mortgage or mukarrari lease of the tenancy or any portion thereof shall be valid, unless it is made with the consent of all the Mundari khunt-kattidars.
- (6) No transfer of a Mundari khunt-kattidari tenancy or any portion thereof, by any contract or agreement made otherwise than as provided in the foregoing sub-sections, shall be valid; and no such contract or agreement shall be registered.
- (7) Nothing in the foregoing sub-sections shall affect any sale or, except as declared in the proviso to sub-section (1), any mortgage, or any lease, made before the commencement of the Chota Nagpur Tenancy (Amendment) Act, $1903\lceil^{1}\rceil$.
- 241. (1) Notwithstanding anything contained in section 240, a Transfer for Mundari khunt-kattidar may, without the consent of his landlord, transfer certain the land comprised in his tenancy, or any part thereof, for any reasonable and sufficient purpose having relation to the good of the tenancy or of the tenure or estate in which it is comprised, such as the use of the land for any charitable, religious or educational purpose or for the purposes of manufacture or irrigation, or as building ground for any such purpose, or for access to land used or required for any such purpose:

Provided that the transfer shall be made by registered deed and that. before the deed is registered and the land transferred, the written consent of the Deputy Commissioner shall be obtained to the terms of the deed and to the transfer.

(2) Before consenting to any such transfer, the Deputy Commissioner shall satisfy himself that [2] [adequate compensation is tendered to] the landlord and other co-sharers in the tenancy [3][***] for the loss (if any) caused to them by the transfer; and, where only part of the land comprised in the tenancy is transferred, may, if he thinks fit, apportion between the transferee and the original tenant all dues payable for the tenancy.

^[1] See second footnote on the preceding page.
[2] The words "adequate compensation is tendered to" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 63, in Vol. III of this Code.

^[3] The words "are adequately compensated" were omitted by ibid, s. 63.

B. & O. Act

4 of 1914.

(Secs. 242-244.)

(3) An appeal against any order of a Deputy Commissioner consenting or refusing to consent to any such transfer shall lie as provided in Chapter XVI.

Ejectment of persons un-lawfully obtaining possession of such tenancies.

242. If any person obtains possession of a Mundari khunt-kattidari tenancy or any portion thereof in contravention of the provisions of section 240, the Deputy Commissioner may eject him therefrom;

and if the tenancy was, before such possession was obtained, entered as a Mundari khunt-kattidari tenancy in a record-of-rights finally published under this Act or under any law in force before the commencement of this Act, no suit shall be maintainable in any Court in respect of such ejectment; but an appeal shall lie as provided in Chapter XVI.

Enhancement of rent.

- 243. (1) The rent of a Mundari khunt-kattidari tenancy may be enhanced only—
 - (a) by an order of the Deputy Commissioner, and
 - (b) if it be shown before the Deputy Commissioner that the tenancy was created within a period of twenty years immediately preceding the presentation of the petition for enhancement
- (1) An order of the Deputy Commissioner under sub-section (1) shall not enhance the rent of any such tenancy to an amount which would exceed one-half of the rent which would be payable for the land if it were held by a raiyat having a right of occupancy therein.
- (3) The provisions of sections 28 to 30 shall be applicable to proceedings for the enhancement of the rent of a Mundari khunt-kattidari tenancy.

Recovery of arrears of rent under the certificate procedure where there is a record-ofrights.

[1] [244. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which a record-of-rights has been prepared under this Act or under any law in force before the commencement of this Act.

no suit shall be maintainable in any Court for the recovery of the arrear; but the landlord may apply in writing to the Deputy Commissioner to sign a certificate authorizing the recovery thereof, with simple interest not exceeding twelve-and-a-half, or (in the case of money recoverable under the Cess Act, 1880)[2] at twelve-and-a-half per Ben. Act & centum per annum, under the Bihar and Orissa Public Demands of 1880. Recovery Act, 1914. [8]

(2) Every such application shall be signed and verified by the landlord making it, in the manner prescribed by rule 1 in Schedule II to the

^[1] This section was substituted for the original section 244 by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914), s. 69, schedule III, part III, printed in Vol. III of this Code

^[2] Printed ante, p. 369.
[3] Printed in Vol. III of this Code.

(Sec. 244.)

7 of 1870.

B. & O.

1914,

Act 4 of

said Act, as amended for the time being by rules made under section 47 thereof; and shall be chargeable with a fee of the amount which would be payable under the Court-Fees Act, 1870,[1] in respect of a plaint for the recovery of a sum of money equal to that stated in the application as being due.

- (3) Upon receiving any such application the Deputy Commissioner may, after making such inquiry and taking such evidence as he may consider necessary, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (2) and shall cause the certificate to be filed in his office.
- (4) The person in whose favour any such certificate is signed shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate-officer for the recovery of such amount shall be taken at the instance of the first mentioned person, and at his cost and on his responsibility, and not otherwise.

(5) The Bihar and Orissa Public Demands Recovery Act, 1914,[2] and sections 181 to 207 of this Act, with such restrictions and modifications (if any) as may be prescribed, shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (3):

Provided as follows:--

(a) subject to the provisions of section 248, a certificate signed under this section may be enforced only by the attachment and sale of the movable property of the person against whom the certificate is made, or by the attachment and realization of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes; and

(b) no objection by any third person to the attachment or sale of crops shall be entertained, except-

- (i) an objection, by a mortgagee holding under a bhugut bandha mortgage, that the judgment-debtor has other movable property or assets, from which the sum due can be realized; or
- (ii) an objection, by a lessee holding under a mukarrari lease as described in section 240, clause (a), that the land in respect of which the arrear accrued is included in his

^[1] Printed in General Acts, 1834-1872, Ed 1928, p. 286. [3] Printed in Vol. III of this Code,

(Secs 245.247.)

lease, and that the judgment-debtor has other movable property or assets from which the sum due can be realized; or

- (iii) an objection, by a cultivator, that he is in possession of the land in respect of which the arrear accrued, that the land is recorded in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired such possession, and that the judgment-debtor has other movable property or assets from which the sum due can be realized; or
- (10) an objection, by such third person, that the land on which such crops were or are standing is entered in the recordof-rights as being in the possession of himself or of some person from whom he has lawfully acquired possession, and that such land does not form part of the tenancy in respect of which the certificate was signed.
- (6) Notwithstanding anything hereinbefore contained, the Deputy Commissioner may, in any case, by written order setting forth the reasons therefor, refuse to sign a certificate as aforesaid, or stay for any specified period the execution of any certificate which has been signed.
- (7) An appeal from any order made under sub-section (6) shall lie as provided in Chapter XVI.]

Reference of Court.

245. If, in the course of any proceedings under section 244, any question of title is raised which could, in the opinion of the Deputy Commissioner, more properly be determined by a Civil Court, the Deputy Commissioner shall refer such question to the principal Civil Court in the district for determination.

Recovery of arrear of rent by suit is no recordof-rights.

- 246. (1) When an arrear of rent accrues in respect of a Mundari khunt-kattidari tenancy for which no record-of-rights has been prepared, where the landlord may institute a suit for the recovery of the arrear.
 - (2) Subject to the provisions of section 248, a decree or order made in any such suit may be enforced only by the attachment and sale of the movable property of the defendant, or by the attachment and realization of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes.

Joinder of parties in proceedings under section 244 or 246.

247. Where a Mundari khunt-kattidari tenancy is held jointly by a group of khunt-kattidars,

and an objection to the making of a certificate under section 244, or to the execution thereof, or to the maintenance of a suit under section 246, is made on the ground that all the khunt-kattidars have not been made parties to the proceedings,

(Secs. 248-252.)

the objection shall not be entertained if it be shown that other khunt-kattidars could not be made parties without undue delay or expense.

B. & O. Act 4 of 1914.

248. Where a decree, or a certificate under [1][the Bihar and Orissa Recovery of Public Demands Recovery Act, 1914,] has been made against a Mundari money due chunt-kattidar for any money due to the Government or for rent due to Government a landlord, the Deputy Commissioner may attach the land occupied by or rent due him [2] [whether it be in his immediate occupation or in possession of a lord. mortgagee or of any other person except a raivat or a lessee holding under a mukarrari lease as described in section 240, clause (4) (a), and make such arrangements as the Deputy Commissioner may consider suitable for liquidating the debt [8] [and in particular he may realize and devote to such liquidation all rents due to such mortgagee or other person as aforesaid, and such mortgagee or other person shall not recover from any person rents so realized.

249. When a Mundari khunt-kattidar has paid the rent of his Recovery of tenancy, including portions thereof due from his co-sharers or any of contributions them, the said portions may, if the proportions due by such co-sharers co-sharer are definitely stated in a record-of-rights prepared under this Act or tenants. under any law in force before the commencement of this Act, be recovered by him. with interest, under the procedure provided by section 244, as if they were an arrear of rent due to a landlord.

250. All Mundari khunt-kattidari tenancies shall be so described in Entry of any record-of-rights prepared under Chapter XII.

Mundari khuntkattidari tenancies in record-of rights.

251. No suit shall be entertained under section 87 for the decision Bar to suits of any dispute regarding any entry relating to a Mundari khunt-kattidari under section 87. tenancy in a record-of-rights.

252. (1) At any time within three months from the date of the Decision of certificate of the final publication of the record-of-rights under this Act, regarding or under any law in force before the commencement of this Act, a suit entries or may be instituted before a Revenue-officer, for the decision of any dispute omissions in record-ofregarding any entry of a Mundari khunt-kattidari tenancy or the sights. incidents thereof in the record, or regarding any omission to enter such a tenancy or any incident thereof in the record; and the Revenue-officer shall hear and decide the dispute.

[8] These words were added by ibid, s. 64(2).

^[1] The words and figures "the Bihar and Orissa Public Demands Recovery Act, 1914," were substituted for the original words and figures "the Public Demands Recovery Act, 1895," by the Bihar and Orissa Public Demands Recovery Act, 1914 (B. & O. Act 4 of 1914) s. 69 and Sch. III, Part III, in Vol. III of this Code.

[2] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 64(1), in Vol. III of this Code.

[8] These words were added by thid s 64(2)

(Secs. 253-256.)

(2) In all such suits the Revenue-officer shall, subject to any rules made in this behalf under section 264, adopt the procedure laid down in Chapter XVI for the trial of suits before the Deputy Commissioner.

Appeal decisions.

253, An appeal shall lie, in the prescribed manner and to the against such prescribed officer, from any decision of a Revenue-officer under section 252.

Entry of decision in record-ofrights.

254. Whenever a suit instituted under section 252 has been finally decided, a note of the decision shall be made in the record-of-rights, as finally published, by the Revenue-officer referred to in that section; and such note shall be considered as part of the record.

In preparing record-ofrights, judgments, etc., in suits not to be taken as evidence that tenancies are or are not Mundari khuntkattidari

255. When an order has been issued under section 80 of this Act, or under section 101 of the Bengal Tenancy Act, 1885[1], in respect of 8 of 1885. any local area, estate, tenure or part thereof, no judgment, decree or order in any suit instituted thereafter shall be taken as evidence,

in any inquiry made by a Revenue-officer engaged in the preparation of a record-of-rights for such area, estate, tenure or part, under Chapter XII of this Act, or under Chapter X of the said Bengal Tenancy Act, 8 of 1885. 1885[¹],

respecting any claim that any tenancy within that area, estate, tenure or part is or is not a Mundari khunt-kattidari tenancy.

Record-ofrights to be conclusive evidence on the question whether a tenancy is. a Mundari khuntkattidari tenancy.

tenancies.

256. [2][(1)] When a record-of-rights has been finally published under section 83 of this Act, or under sub-section (2) of section 103A of the Bengal Tenancy Act, 1885,[1] or amended under section 254 of this 8 of 1883 Act,

the entries therein relating to Mundari khunt-kattidari tenancies shall be conclusive evidence of the nature and incidents of such tenancies and of all particulars recorded in such entries;

and, if any tenancy in the area, estate or tenure for which the recordof-rights was prepared has not been recorded therein as a Mundari khunt-kattidari tenancy, no evidence shall be received in any Court to show that such tenancy is a Mundari khunt-kattidari tenancy.

[3][(2) Where in the record-of-rights finally published under subsection (2) of section 103A of the Bengal Tenancy Act, 1885,[1] for a 8 of 1885, village in the Estate of Porahat in the district of Singhbhum, a tenant of the village has been recorded as a Mundari khunt-kattidar, all land which he held at the date of final publication, shall be deemed to have been recorded in the record-of-rights as his Mundari khunt-kattidari tenancy.

[8] This sub-section was inserted by ibid, s. 65(2).

^[1] Printed in Vol. I of this Code.
[2] The brackets and figure "(1)" were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & (). Act 6 of 1920), 5. 65(1), in Vol. III of this Code.

(Secs. 257-261.)

CHAPTER XIX.

SUPPLEMENTAL PROVISIONS.

Joint-landlords.

257. When two or more persons are joint-landlords, anything which Joint-landa landlord is, under this Act, required or authorized to do must be done lords. by both or all those persons acting together, or by an agent authorized to act on behalf of both or all of them.

Bar to suits [1] [and finality of decisions in certain cases].

258. Save as expressly provided in this Act, no suit shall be Bar to suits entertained in any Court to vary. modify or set aside, either directly or in certain indirectly, any [2][decision], order or decree of any Deputy Commissioner or Revenue-officer in any suit, [3][application] or proceeding under section 29, section 32, section 35, section 42, section 46, subsection (4), section 49, section 50, section 54, section 61, section 63, section 65, section 73 [3][section 74A], section 75, section 85, section 86, section 87, section 89, [4][***] or section 91 (proviso), or under Chapter XIII, XIV, XV, XVI or XVIII, except on the ground of fraud or want of jurisdiction [5][and every such decision, order or decree shall have the force and effect of a decree of a Civil Court in a suit between the parties and; subject to the provisions of this Act relating to appeal, shall be final.]

Process.

- 259. Every notice, summons or other process under this Act Mode of required to be served on any person shall be served in the prescribed service. manner.
- **260.** Every process issued by a Deputy Commissioner or Revenue-Authentica-officer under this Act shall bear his seal and signature; and the cost of tion and payment of serving the same shall be paid by such person and in such manner as costs. may be prescribed.

Costs.

5 of 1908.

[6] [261. The provisions of section 35 of the Code of Civil Procedure, Costs in 1908, and of sub-rules (2) and (3) of rule 6 of Order XX of the First applications. Schedule to the said Code shall apply to all suits, applications and proceedings under this Act.]

[2] The word "decision" was inserted by *ibid*, s. 66(2)(a).
[3] The word "application" and the word, figures and letter "section 74A" were inserted by *ibid*.

[4] The word and figures "section 90" were omitted by ibid, s. 66(2)(b). [5] These words were inserted by ibid, s. 66(2) (c).

[6] This section was substituted for the original section 261 by ibid, s. 67.

^[1] These words were added to the sub-heading "Bar to suits" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 66(1), in Vol. III of this Code.

(Secs. 262-264.)

Deposit of costs of proceedings to be incurred by the Government.

- 262. (1) A Revenue-officer or Deputy Commissioner may, subject to any directions given by the Local Government, require any plaintiff or applicant to deposit in advance the whole or any part of the estimated amount of the expenses to be incurred by the Government in any proceedings under this Act.
- (2) If the amount so deposited by any person exceeds the sum finally made payable by him as costs, the excess shall be refunded to him when the proceedings are completed.

Production of witnesses and documents.

Production of witnesses and documents.

263. For the purposes of any inquiry under this Act, any Deputy Commissioner or Revenue-officer shall have power to summon and enforce the attendance of witnesses and compel the production of documents in the same manner as is provided in the case of a Court by the Code of Civil Procedure, [1][1908].

[1] [5 of 1908.7

ules and Notifications

Power to make rules objects of Act.

264. (1) The Local Government may make rules [2] to carry out the make rules to carry out objects of this Act.

- (2) In particular, and without prejudice to the generality of subsection (1), the Local Government may make rules—
 - (i) to prescribe particulars to be specified, in pursuance of clause (a) of section 28, in applications for the enhancement of the rent of occupancy holdings:
 - (ii) to limit the enhancement of the rent of occupancy holdings under section 29;
 - (iii) to prescribe particulars to be specified, in pursuance of clause (j) of section 31, in applications for increase of rent in respect of increase in the area of land held by occupancyraiyats;
 - (iv) to prescribe particulars to be specified, in pursuance of clause (h) of section 34, in applications for the reduction of rent paid by occupancy-raivats:
 - (v) to prescribe the manner in which the possession of land should be given under section 46, sub-section (4), section 50, sub-section (2), section 71 or section 73, sub-section (3);

^[1] The figures "1908" were inserted and the letter, word and figures "V of 1908" substituted for the letters, word and figures "XIV of 1882" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2(3).

^[2] For a list of rules made under this section and references to publications in which they have been published, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI.

(Sec. 264.)

- (vi) to prescribe the manner in which landlords shall send notices to the Deputy Commissioner under section 73, sub-section (2);
- (vii) to prescribe the manner in which rents shall be settled under section 85;
 - (viii) to prescribe the officer to whom and the manner in which appeals shall lie from orders or decisions passed by Revenue-officers under section 61, section 85, section 87, section 89, Chapter XIII, Chapter XIV, Chapter XV, or section 252;
 - (ix) to regulate the transfer of cases to Civil Courts under the first proviso to section 87; [1] [and the proviso to section 139];
 - (x) to prescribe the manner in which records-of-rights shall be revised in pursuance of a direction given under section 98;
 - (xi) to declare the restrictions or modifications (if any) subject to which the provisions of Chapter XII shall apply to the revision of record-of-rights or the settlement of rents in pursuance of a direction given under section 98;
 - (xii) to prescribe particulars to be contained in a record prepared under section 106:
 - (xiii) to prescribe the form of statements to be prepared under section 111, clause (1);
 - (xiv) to prescribe the manner in which copies of entries in records prepared under Chapter XV shall be served under section 129;
 - (xv) to regulate the exercise of the right conferred by section 140 to bring collective suits or make collective applications;
 - (xvi) to prescribe the Court by which decrees or orders passed by a Deputy Commissioner under this Act may be executed;
 - (xvii) to prescribe the form of applications for the execution of decrees or orders passed by a Deputy Commissioner under this Act:
 - (xviii) to prescribe the manner of executing decrees or orders referred to in section 195;
 - (xix) to prescribe the manner of dealing with sale-proceeds under section 205, sub-section (2);

^[1] These words were inserted by the Chota Nagpur Tenancy (Amendment) Act, 1923 (B. & O. Act 5 of 1923), s. 6, printed in Vol. III of this Code.

(Sec. 265.)

- (xx) to prescribe the manner of service of notices, summonses and other processes, and of publication of notices, issued under this Act;
- (xxi) to declare by what person and in what manner the cost of serving processes issued by a Deputy Commissioner or a Revenue-officer under this Act shall be paid;
- (xxii) to regulate the procedure to be followed by Revenueofficers in the discharge of any duty imposed upon them by or under this Act, and may, by such rules, confer upon any such officer-
 - (a) any power exercised by a Civil Court in the trial of
 - (b) power to enter upon any land, and to survey, demarcate and make a map of the same, and any power exercisable by any officer under the Bengal Survey Act, 1875; [1] and Ben. Act V

(c) power to cut and thresh the crops on any land and weigh of 1875. the produce, with a view to estimating the capabilities of the soil.

[2](xxm) to prescribe the forms to be used under this Act;

(xxiv) to prescribe the procedure to be followed and the information to be given by any party or applicant in any proceeding under this Act;

[3](xxv) to prescribe any other matter by this Act required, or expressly or impliedly authorized, to be prescribed.]

265. (1) The Local Government may [4][***] make rules[6] for regulating the procedure of the Deputy Commissioner in matters under cedure, and this Act for which a procedure is not provided hereby; and may, by any such rule, direct that any provisions of the Code of Civil Procedure, [6][5 of [6][1908] shall apply, with or without modification, to all or any classes 1908.] of cases before the Deputy Commissioner.

Power to make rules as to proapplication of the Code of Civil Procedure.

[1] Printed ante, p. 169.

^[2] For a list of rules regarding rent receipts under section 54 ante, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I, Part VI. For a list of rules prescribing forms for remitting rent by postal money order, see ibid.
[8] This clause was inserted by the Chota Nagpur Tenancy (Amendment) Act. 1920 (B. & O. Act 6 of 1920), s. 58, printed in Vol. III of this Code.

For rules regarding transfer of holdings, see the B. & O. Local Statutory Rules and Orders Vol. I. Part VI.

and Orders, Vol. I, Part VI.

[4] The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (38 of 1920), s. 2 and Sch. I, Part V, printed

of the Devolution Act, 1920 (36 of 1920), s. 2 and Sch. 1, Fart V, printed in Vol. I of this Code.

[5] For rules made under this section, see the B. & O. Local Statutory Rules and Orders, Vol. I, Part VI.

[6] The figures "1908" were inserted and the letter, word and figures "V of 1908" were substituted for the letters, word and figures "XIV of 1882" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2(3), printed in Vol. III of this Code. printed in Vol. III of this Code.

· (Sec. 266.)

- (2) When any provision of the said Code is applied by such rules, the rules may further declare that any provision of this Act which is superseded by, or is inconsistent with, any provision so applied shall be deemed to be repealed.
- (3) Until rules are made under sub-section (1), and subject to those rules when made and to the other provisions of this Act, the provisions of the Code of Civil Procedure, [1][1908] relating to—
 - (a) the substitution and addition of parties,
 - (b) the amendment of plaints,
 - (c) the production of documents,
 - (d) the attendance, remuneration, punishment and examination of witnesses.
 - (e) the amendment of decrees,
 - (f) commissions to examine witnesses,
 - (g) commissions for local investigations,
 - (h) attachment before judgment,
 - (j) arbitration,
 - (k) review of judgment,
 - $\lceil 2 \rceil \lceil (l) \rceil$ withdrawal of suits by parties,
 - (m) return of plaint for presentation to the proper Court,
 - (n) inspection, discovery and return of documents,
 - (o) commission to examine accounts,
 - (p) death, minority and lunacy of parties,
 - (q) injunction to restrain continuance or repetition of breach,
 - (r) execution in case of cross-claims under the same decree, and
 - (s) stay of execution,]

shall, so far as may be, and in so far as they are not inconsistent with this Act, apply to all suits, appeals and proceedings before the Deputy Commissioner under this Act, and to all appeals from decisions passed in such suits or proceedings.

266. (1) All powers conferred by this Act for making rules are Publication subject to the condition that the rules be made after previous publication of rules in draft.

^[1] The figures "1908" were inserted and the letter, word and figures "V of 1908" were substituted for the letters, word and figures "XIV of 1882" by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2(3), printed in Vol. III of this Code.

[2] Clauses (l) to (s) were inserted by ibid, s. 69.

(Secs. 267-271.)

(2) Sub-section (1) shall not apply to any rules made and published in the Calcutta Gazette within a period of two months from the commencement of this Act; but all rules so made and published shall be re-issued, after previous publication, and with such amendments (if any) as the Local Government may consider necessary, within a period of one year from such commencement.

Publication and effect of rules and notifications.

267. All rules made, and notifications issued, under this Act shall be published in the [1][***] Gazette, and on such publication shall have effect as if enacted in this Act.

Recovery of Dues.

Recovery of dues.

- 268. (1) Costs and interest awarded under this Act in rent suits, and damages awarded under section 175, shall be recoverable as if they were arrears of rent.
- (2) All costs, interest and damages not referred to in sub-section (1), and all compensation, fines and penalties, awarded or imposed under this Act, shall be recoverable in the manner provided in Chapter XVI for the recovery of money (not being arrears of rent) due under decree.

Powers.

Transfer of cases from one Revenueofficer to another.

269. A Revenue-officer may at any time transfer any pending suit, application or proceeding under this Act from the file of any Revenueofficer acting under this Act to the file of any other Revenue-officer so acting who is duly authorized to entertain and decide such suit, application or proceeding.

Control over. missioners and Deputy Collectors.

270. In the performance of their duties and the exercise of their Deputy Com- powers under this Act, Deputy Commissioners shall be subject to the general direction and control of the Commissioner and the Board, and Deputy Collectors exercising functions of the Deputy Commissioner shall also be subject to the direction and control of the Deputy Commissioner.

Saving of Special Enactments.

Saving of special enactments.

- 271. Nothing in this Act shall affect—
 - (a) the powers and duties of Settlement-officers as defined by any law not expressly repealed by this Act; or
 - (b) any other special or local law not repealed, either expressly or by necessary implication, by this Act,

^[1] The word "Calcutta" was omitted by the Chota Nagpur Tenancy (Amendment) Act, 1920 (B. & O. Act 6 of 1920), s. 2(2), in Vol. III of this Code.

(Schedules A and B).

SCHEDULE A.

ACTS AND NOTIFICATION REPEALED IN THE CHOTA NAGPUR DIVISION, EXCEPT THE DISTRICT OF MANBHUM.

[See section 2(1).]

Number and year. Short title.			
. The Chota Nagpur Landlord and Tenan Procedure Act.			
The Chota Nagpur Commutation Act, 1897.			
The Chota Nagpur Tenancy (Amendment) Act 1903.			
The Chota Nagpur Tenancy (Amendment) Ac 1905.			
The Bengal Rent Settlement Act, 1879.			

Notification no. 1379-L. R., dated the 5th March, 1908, published in the Calcutta Gazette of the 11th idem, Part I, page 631, and in the Gazette of India of the 21st idem, Part I, page 214.

SCHEDULE B.

ACTS PROSPECTIVELY REPEALED IN THE DISTRICT OF MANBHUM.

[See section 2 (2).]

Number and year. Act of the Governor-General of India in Council. X of 1859 \ The Bengal Rent Act, 1859. Acts of the Bengal Council. VI of 1862 The Bengal Rent Act, 1862. IV of 1867 The Bengal Rent (Appeals) Act, 1867.	1	2
X of 1859 \ The Bengal Rent Act, 1859. Acts of the Bengal Council. VI of 1862 The Bengal Rent Act, 1862. IV of 1867 The Bengal Rent (Appeals) Act, 1867.	Number and year	Short title.
VI of 1862 The Bengal Rent Act, 1862. IV of 1867 The Bengal Rent (Appeals) Act, 1867.	Act of	the Governor-General of India in Council.
VI of 1862 The Bengal Rent Act, 1862. IV of 1867 The Bengal Rent (Appeals) Act, 1867.	X of 1859	\ The Bengal Rent Act, 1859.
IV of 1867 The Bengal Rent (Appeals) Act, 1867.		Acts of the Bengal Council.
VIII of 1879 The Bengal Rent Bettlement 1800, 1910.		The Bengal Rent Act, 1862. The Bengal Rent (Appeals) Act, 1867. The Bengal Rent Settlement Act, 1879.

BENGAL ACT 2 OF 1909.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1909.]

CONTENTS.

SECTION.

- 1. Short title.
- 2. Amendment of Ben. Act 9 of 1879, section 50,

BENGAL ACT 2 OF 1909.

[THE BENGAL COURT OF WARDS (AMENDMENT) ACT, 1909.][1]
(17th February, 1909.)

An Act further to amend the Court of Wards Act, 1879.[2]

WHEREAS it is expedient further to amend the Court of Wards Act, 1879;[2] It is hereby enacted as follows:—

- 1. This Act may be called the Bengal Court of Wards (Amend-Short title. ment) Act, 1909.
- 2. At the end of section 50 of the Court of Wards Act, 1879,[2] the Amendment of Bengal Act 9 of 1879, section

[&]quot;or mortgages on immovable property."

^[1] Legislative Papers.—For Statement of Objects and Reasons, see Calcutta Gazette, 1908, Pt. IV, p. 247; for Proceedings in Council, see *ibid*, 1908, Pt. IVA, pp. 252, 274; see *ibid*, 1909, Pt. IVA, p. 5.

The application of the Act is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code.

^[2] Printed ante, p. 279.

BENGAL ACT 3 OF 1909.

[THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) ACT, 1909.]

CONTENTS.

SECTION.

- 1. Short title.
- 2. Amendment of section 2 of Act VI of 1876.
- 3. New section 2A-
 - 2A. Power of Deputy Commissioner to order production of statement and documents.
- 4. Amendment of section 3.
- 5. Amendment of section 4.
- 6. Amendment of section 5.
- 7. Addition to section 7.
- 8. Amendment of section 9.
- 9. Amendment of section 10.
- New section 10Λ—
 - 10A. Review by Commissioner.
- 11. Amendment of section 12.
- 12. New section 12A-
 - 12A. Continuance of disabilities after restoration of property to owner.
- 13. New section 14A-
 - 14A. Power to order production of title to tenures and under-tenures.
- 14. New sections 18, 18A and 18B-
 - 18. Power of Manager to raise money by mortgage, sale or loan.
 - 18A. Freedom from obligation to inquire into necessity for, or application of, 'money.
 - 18B. Power of Manager to contract and take action for the benefit of the property.
- 15. New sections 19A and 19B-
 - 19A. Power to make orders as to education of holder's children. Penalty for disobedience.
 - 19B. Recovery of fines.
- 16. New sections 21A and 21B-
 - 21A. Control by Board of Revenue.
 - 21B. Suits and appeals by and against holder, during management.
- 17. Amendment of section 23.
- 18. Repeal of section 24.

BENGAL ACT 3 OF 1909.

[THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) ACT, 1909.][1]

(24th March, 1909.)

An Act further to amend the Chota Nagpur Encumbered Estates Act, 1876.[2]

WHEREAS it is expedient further to amend the Chota Nagpur Encumbered Estates Act, 1876;[2]

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892,[3] to the passing of this Act;

It is hereby enacted as follows:-

- 1. This Act may be called the Chota Nagpur Encumbered Estates Short title. (Amendment) Act, 1909.
- 2. (1) In section 2 of the Chota Nagpur Encumbered Estates Act, Amendment 1876, [2] as amended by the Chota Nagpur Encumbered Estates of Act 6 of (Amendment) Act, 1884[2] (hereinafter cited as "the said Act"), for ¹⁸⁷⁶. the words from "or, when any such property" to the words "such property is situate" the following shall be substituted, namely:—

"or the Deputy Commissioner within whose jurisdiction any such property belonging to such holder is situate, when—

- (i) attachment has been made of, or a proclamation has been issued for the sale of, such property or any portion thereof, in execution of a decree or order of a Civil Court or a Revenue Court, or
- (ii) such Deputy Commissioner is satisfied, after making such inquiry as he may think fit, and after considering and placing on record all representations (if any) made by such holder, that such holder has entered upon a course of wasteful extravagance likely to dissipate his property."
- (2) After the words "consent of the Lieutenant-Governor of Bengal," in the same section, the words "(to be obtained through the Board of Revenue)" shall be inserted.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1908, Pt. IV, pp. 252-253; for Proceedings in Council, see ibid, 1908, Pt. IVA, pp. 250-252, and p. 274, and ibid, 1909, Pt. IVA, pp. 17-19.

^[2] Printed in Vol. I of this Code.

^[3] Now see s. 80A(3) of the Government of India Act.

(Secs. 3-4.)

(3) After the words "during the continuance of such management," in the same section, the following shall be inserted, namely:—

"Provided as follows-

First, if any holder referred to in clause (ii) of this section petitions the Commissioner, while the inquiry referred to in that clause is being made, to postpone, until the petitioner has been heard, the passing of orders on any request that the Deputy Commissioner may make for applying the provisions of this Act to his case,

and if a request as aforesaid be made by the Deputy Commissioner, he Commissioner shall appoint a day for hearing the petitioner; and f he appears, either in person or by agent, on the day so appointed and on the subsequent day (if any) to which the hearing is adjourned, the Commissioner shall not pass any order in the matter until he has been heard;

Secondly, if any holder referred to in classes of this section patitions the Board of Revenue, while any proceedings are pending for the Commissioner under proviso First, to postpone, until the petitioner has been heard, the passing of orders on any request that the Commissioner may make for the consent of the Lieutenant-Governor to the application of the provisions of this Act to his case,

and if a request as aforesaid be made by the Commissioner,

the Board of Revenue shall appoint a day for hearing the petitioner; and if he appears, either in person or by agent, on the day so appointed, and on the subsequent day (if any) to which the hearing is adjourned, the Board shall not pass any order in the matter until he has been heard;

Thirdly, the consent of the Lieutenant-Governor shall not be given in the case of any holder referred to in clause (ii) of this section unless either—

such holder belongs to a family of political or social importance, or the Lieutenant-Governor is satisfied that it is desirable in the interests of the tenants of such holder, that such consent should be given."

New section 2A.

- 3. After section 2 of the said Act the following shall be inserted, namely:—
 - 2A. [Printed at pp. 376-377 in Vol. I of this Code.]

Amendment of section

- **4.** (1) In clause *First* of section 3 of the said Act, after the words "British India" the words "or in any Revenue Court in Bengal" shall be inserted.
- (2) In clause Secondly of the same section, after the words "British India" the words "or any Revenue Court in Bengal" shall be inserted.

The Chota Nagpur Encumbered Estates 3 of 1909.7 (Amendment) Act, 1909.

(Secs. 5-9.)

5. (1) In section 4 of the said Act, after clause thirdly, the follow-Amendment ing shall be inserted, namely:-

"fourthly, all sums due in re-payment of loans effected under the power conferred by clause (c) of section 18,"

and clause fourthly shall be re-numbered clause fifthly.

(2) In the same section, the words from "and also in or towards the re-payment" to "by the Manager under this Act," are hereby repealed.

6. In section 5 of the said Act, for the words "Urdu and Hindi" Amendment the words "and the language of the district or estate" shall be substituted.

7. To section 7 of the said Act the following shall be added, Addition to

"If a holder of property has petitioned the Commissioner, under the Barring of namely:first proviso in section 2 or the first proviso to section 12A, sub-section debts incur-red after (5), to postpone the passing of orders on any request that the Deputy making Commissioner might make for applying or re-applying the provisions petition for

of this Act to his case, every debt or liability which such holder has, after the date on orders for which the said request was made, incurred, or charged upon his pro- of Act. perty, shall be barred, with the exception of-

(a) debts due or liabilities incurred to the Government,

(b) debts or liabilities which the Deputy Commissioner is satisfied had necessarily to be incurred for the maintenance of such holder or his family,

(c) in the case of under-tenures, the rent due to the superior landlord, and

(d) interest due in respect of debts or liabilities incurred before the said date."

8. (1) In section 9 of the said Act, after the word "lease"— Amendment (a) in the first place where it occurs, the words "or rent-free or of section 9. maintenance grant," and

(b) in all other places where it occurs, the words "or grant" shall, respectively, be inserted.

(2) To the said section the following shall be added, namely:— "Provided that no rent-free or maintenance grant shall be set aside or cancelled without the previous sanction of the Commissioner, which may be accorded only if he is satisfied that the grant was not made in good faith."

Amendment 9. In section 10 of the said Act,-(a) after the figure "9" the words and figure "except a refusal of section under the proviso to section 9" shall be inserted; and

(b) for the words "shall be final," in both places in which they occur, the words, figures and letters 'shall, subject to the

(Secs. 10-18.)

provisions of sections 10A and 21A, be final," shall be substituted.

New section 10A.

- 10. After section 10 of the said Act the following shall be inserted, namely:—
 - 10A. [Printed at p. 381 in Vol. I of this Code.]

Amendment of section 12.

- 11. (1) In section 12 of the said Act, for the words "received from the Government under section eighteen" the words, brackets, letter and figures "effected under the power conferred by clause (c) of section 18," shall be substituted.
- (2) In the said section 12, after the words "powers hereinafter contained" the following shall be inserted, namely:—
- "Provided that, where a fresh order has been made under section 2, in pursuance of section 12A, sub-section (5), re-appointing a Manager and vesting in him the management of the whole or any portion of the property of any holder, such property shall not be restored to such holder, but shall be retained by the Manager for restoration to the heir of such holder in due course."

New section 12A.

- 12. After section 12 of the said Act the following shall be inserted, namely:—
 - 12A. [Printed at pp. 383-385 in Vol. I of this Code.]

New section 14A.

- 13. After section 14 of the said Act the following shall be inserted, namely:—
 - 14A. [Printed at pp. 385-386 in Vol. I of this Code.]

New sections 14. For 18, 18A and namely:—

- 14. For section 18 of the said Act the following shall be substituted, mely:—
 - 18, 18A, 18B. [Printed at pp. 386-387 in Vol. I of this Code.]

New sections 19A and 19B.

- 15. After section 19 of the said Act the following shall be inserted, namely:—
 - 19A, 19B. [Printed at p. 388 in Vol. I of this Code.]

New sections 21A and 21B.

- 16. After section 21 of the said Act the following shall be inserted, namely:—
 - 21A, 21B. [Printed at pp. 388-389 in Vol. I of this Code.]

Amendment of section 23.

- 17. In section 23 of the said Act,—
 (a) to the words "nothing in this Act" the words, figures and letter "subject to the provisions of section 21B," shall be prefixed; and
 - (b) the words "but to all such suits the Manager of such property shall be made a party" shall be omitted.
- 18. Section 24 of the said Act is hereby repealed.

Repeal of section 24.

BENGAL ACT 4 OF 1910.

[THE BENGAL CESS (AMENDMENT) ACT, 1910.]

CONTENTS.

- 1. Short title.
 - 2. Amendment of section 4 of Bengal Act 9 of 1880.
- 3. Amendment of section 12.
 4. Amendment of section 14.
 5. Amendment of sections 12, 14, 15, 16, 36, 54 and 57.
 6. New sections 22 and 23.
 7. Amendment of section 37.
 8. New Chester IIA.

- 8. New Chapter IIA.
- 9. Amendment of section 41.
- 10. Amendment of section 44.

 11. Amendment of section 46(2).

 12. Amendment of section 49.

 13. New section 52A.

- 14. Amendment of section 54.

- 14. Amendment of section 54.
 15. New section 72A.
 16. New section 91A.
 17. Partial repeal of section 94.
 18. Amendment of section 102.
 19. Amendment of section 104.
 20. Amendment of section 105.
 21. Amendment of sections 112 and 113.

BENGAL ACT 4 OF 1910.

[THE BENGAL CESS (AMENDMENT) ACT, 1910.][1]

(25th May, 1910.)

An Act further to amend the Cess Act, 1880.[2]

Whereas it is expedient further to amend the Cess Act, 1880,[2] in the manner hereinafter appearing;

It is hereby enacted as follows:-

- 1. This Act may be called the Bengal Cess (Amendment) Act, 1910. Short title.
- 2. (1) The words "revenue or", in both places in which they occur Amendment in the definition of "annual value of any land, estate or tenure" in of section 4 section 4 of the Cess Act, 1880,[2] are hereby repealed.

 Act 9 of

(2) To the said definition the following shall be added, namely:—1880.

Explanation. [Printed ante. p. 371.]

- (3) After the definition of "the Collector of the district," in the same section, the following definition shall be inserted, namely:—
 "the Settlement Officer." [Printed ante, p. 373.]
- 3. In section 12 of the Cess Act, 1880,[2] after the words "this Amendment section" the words, figures and letter "or in Chapter IIA" shall be of section inserted.
- 4. In section 14 of the said Act, after the words "has ordered Amendment the words and figures "under section 12" shall be inserted.

 'Amendment of section 14.
- 5. (1) In sections 12, 14, 15, 16, 36, 54 and 57 of the said Act, Amendment for the words "Lieutenant-Governor", wherever they occur, the words 12, 14, 15, 16, 36, 54
 "Board of Revenue" shall be substituted.
- (2) In sections 12 and 15 of the said Act, for the word "he", and 57. wherever it occurs, the word "they" shall be substituted.
- 6. For sections 22 and 23 of the said Act, the following shall New sections be substituted, namely:—

 22 and 23.
 - 22, 23. [Printed ante, pp. 379-380.]

[2] Printed ante p. 369.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1910, Pt. IV, p. 6; for Proceedings in Council, see *ibid*, Pt. IVA, pp. 5, 41 and 440 to 447.

LOCAL EXTENT.—The Act has been declared to be in force in the Sonthal Parganas—see Notification no. 3679, dated the 26th September, 1910 and no. 183-L.R., dated the 14th January, 1911, in Vol. IV, Pt. IV, of this Code, but its application is barred in the Angul District by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2), printed in Vol. I of this Code.

(Secs. 7-18.)

Amendment of section 37.

7. In section 37 of the said Act, for the words "Board of Revenue" the word "Commissioner" shall be substituted.

New Chapter

8. After section 37 of the said Act, the following shall be inserted, namely:—

[1] Chapter IIA.—37A to 37I [Printed ante, pp. 384-387.]

Amendment of section 41.

9. To section 41 of the Cess Act, 1880,[2] the following shall be Ben. Act 9 added, namely:—

[Printed ante, p. 390.]

Amendment of section 44:

10. After sub-section (4) of section 44 of the Cess Act, 1880,[2] the Ben. Act 9 following shall be inserted, namely:—

(4a), (4b). [Printed ante, pp. 392-393.]

Amendment of section 46 (2).

- 11. In sub-section (2) of section 46 of the Cess Act, 1880,[2] for the Ben. Act 9 words from "and the Board of Revenue may" to the end of the sub- of 1880. section, the following shall be substituted, namely:—
- "and the Collector, if he becomes aware that any separate account opened under sub-section (1) does not represent existing facts, may, after service of a notice on the recorded proprietor or manager, and after hearing any objection which may be preferred within six weeks of such service, close the account."

Amendment of section 12. In section 49 of the said Act, for the words "fifteen days" the words "six weeks" shall be substituted.

49. New section 52A.

13. After section 52 of the said Act, the following shall be inserted, namely:—

52A. [Printed ante, p. 397.]

Amendment of section 54.

14. For clause (1) of the concluding paragraph of section 54 of the said Act, $\lceil 1 \rceil$ the following shall be substituted, namely:—

"(I) a statement of the quantity, or a description, of the land, as entered in the Collector's valuation-roll."

New section 72A.

15. After section 72 of the said Act, the following shall be inserted, namely:—

72A. [Printed ante, p. 405.]

New section 91A.

16. After section 91 of the said Act, the following shall be inserted, namely:—

91A. [Printed ante, p. 411.]

Partial repeal of section

17. In section 94 of the said Act, the words from "And, if the person so prosecuted" to the end of the section are hereby repealed.

Amendment of section 102.

18. In section 102 of the said Act, after the words and figures "section 78 and," the words, figures and letter "subject to anything contained in Chapter IIA" shall be inserted.

New sections were substituted for sections 37E-37G by the Bihar and Orissa Cess (Amendment) Act, 1916, (B. & O. Act 1 of 1916) s. 11, in Vol. III of this Code.
 Printed ante p. 369.

(Secs. 19-21.)

- 19. In section 104 of the said Act, after the figures "26" the Amendment of section 104.

 figures "46 (2)" shall be inserted.
- 20. For section 105 of the said Act, the following shall be Amendment substituted, namely:—

 of section 105.

105. [Printed ante, p. 415.]

21. In sections 112 and 113 of the said Act, for the words Amendment "Lieutenant-Governor" the word "Commissioner" shall be substi-of sections tuted.

BENGAL ACT 2 OF 1911.

[The Bengal Vaccination (Amendment) Act, 1911.]

CONTENTS.

- 1. Short title and local extent.
- Power to extend Act.
 Power to suspend Act.
- 4. Amendment of section 2 of Bengal Act 5 of 1880.
- 5. Repeal of portions of section 2.
- 6. Amendment of section 3. 7. Amendment of section 4.
- 8. Amendment of section 5.
- 9. Amendment of section 6.
- 10. Amendment of section 7.
- 11. Amendment of section 8. 12. Amendment of section 10.
- 13. Amendment of sections 13A, 29A and 29B. 14. Amendment of sections 15, 16 and 33. 15. Amendment of section 19.

- 16. Amendment of section 28.
 17. Amendment of Schedule A.
 18. Amendment of Schedule B.
 19. Amendment of Schedule C.
 20. Amendment of Schedule E.

BENGAL ACT 2 OF 1911.

THE BENGAL VACCINATION (AMENDMENT) ACT, 1911.][1]

(22nd March, 1911.)

An Act further to amend the Bengal Vaccination Act, 1880.[2]

Whereas it is expedient further to amend the Bengal Vaccination Act, 1880, [2] in manner hereinafter appearing;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Vaccination (Amend-Short title ment) Act, 1911; and extent.

(2) It applies in the first instance only to-

(a) Calcutta, as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899, [8]

(b) the port of Calcutta, and

3

(c) the Cossipore-Chitpur, Garden Reach, Howrah, Maniktola, South Suburban and Tollyganj Municipalities.

2. (1) The Local Government may, by notification[4] published in Power to extend Act. the Calcutta Gazette, declare its intention to extend this Act or any portion thereof to any town or selected area not mentioned in section 1, subsection (2).

- (2) Any inhabitant of any such town or area who objects to such extension may, within a period of six weeks from such publication, send his objection in writing to a Secretary to the Government of Bengal; and the Local Government shall consider all objections so sent.
- (3) After the expiration of the said period, the Local Government, if no objections have been so sent, or if it considers that the objections so sent are insufficient, may, by a like notification, effect the proposed extension.

extended by notification to any town or selected area in the Province of Bihar and Orissa, see s. 2 (1).

The application of the Act is barred in-

The application of the Act is barred in—
the Angul District, by the Angul Laws Regulation, 1913 (3 of 1913), s. 3 (2),
printed in Vol. I of this Code, and
the Sonthal Parganas, by the Sonthal Parganas Settlement Regulation, 1872 (3 of
1872), s. 3 (2), as amended by the Sonthal Parganas Justice and Laws
Regulations, 1899 (3 of 1899), s. 3, printed in Vol. I of this Code.

[2] Printed ante p. 305.
[3] The Calcutta Municipal Act, 1899 (Ben. Act 3 of 1899) has been repealed and
re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act 3 of 1923) printed in the
Supplement to the Bengal Code, 1913-15, p. 425.

[4] For notifications issued under this section, extending the Act to certain parts
of Bihar and Orissa, see the Bihar and Orissa Local Statutory Rules and Orders, Vol. I,
Part VI.

Part VI.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1910, Pt. IV, pp. 136, 137; for Proceedings in Council, see ibid, Pt. IVA, p. 518; and ibid, 1911, Pt. IVA, p. 26.

LOCAL EXTENT.—This Act extends to the areas mentioned in s. 1 (2), and may be

(Secs. 3-7.)

(4) The substance of every notification under sub-section (1) or sub-section (3) shall be proclaimed and notified in the vernacular, within the town or area affected, by such means and in such manner as the Local Government may direct.

Power to suspend Act.

3. The Local Government may, by notification in the Calcutta Gazette, suspend the operation of this Act in any place.

Amendment of section 2 of Bengal Act 5 of 1880.

- 4. After the definition of "public vaccinator" in section 2 of the Bengal Vaccination Act, 1880,[1] the following shall be inserted, Ben. Act 5 of 1880.
- "Inspector' means a person authorized by the Superintendent of Vaccination to exercise all or any of the functions of an Inspector under this Act".

Repeal of portions of section 2.

- 5. The following words in section 2 of the said Act are hereby repealed, namely:—
 - (1) the words "or specially licensed by the Lieutenant-Governor to practise vaccination and grant certificates under the provisions of this Act"; in the definition of medical practitioner",
 - (2) the word "either" and the words "or by inoculation", in the definitions of "unprotected child" and "unprotected person".

Amendment of section 3.

- 6. In section 3 of the said Act,-
 - (1) for the words "one year", in the first place in which they occur, the words "six months" shall be substituted, and
 - (2) the following words shall be repealed, namely:—
 - "or, if the child be at the time of its arrival less than one year old, within one year and three months after its birth; and the parent or guardian of every unprotected child living in such place at the date of this Act coming into force therein, and whose age at such date exceeds one year, but does not exceed fourteen years, shall, within six months from the said date."

Amendment of section 4.

- 7. In section 4 of the said Act,—
 - (1) for the words "the same day in the following week" the following shall be substituted, namely:—

"a day not less than seven or more than ten days";

- (2) for the words "by the operator or by any person deputed for that purpose by the Superintendent of Vaccination" the following shall be substituted, namely:—
 - "by the operator (if a medical practitioner) or by an Inspector";

(Secs. 8-12.)

- (3) for the words "and it shall be the duty of any public vaccinator who has vaccinated a child elsewhere than at a public vaccine-station to visit the child at the time and for the purpose abovementioned, whether he is requested to do so or not, unless the Superintendent of Vaccination has deputed some other person to act for such public vaccinator in this behalf" the following shall be substituted, namely:—
 - "and when any public vaccinator has vaccinated a child elsewhere than at a public vaccine-station, an Inspector shall visit the child at the time and for the purpose abovementioned, whether he is requested to do so or not";
- (4) for the words "the public vaccinator" the words "the Inspector" shall be substituted; and
- (5) for the words "a public vaccinator" the words "an Inspector" shall be substituted.
- 8. In section 5 of the said Act,—
 - (1) for the words "public vaccinator", in both places in which Amendment they occur the word "Inspector" shall be substituted, of section 5.
 - (2) for the words "three months," in both places in which they occur, the words "one month" shall be substituted.
- 9. For section 6 of the said Act the following shall be substituted, Amendment namely:—

 of section 6.
 - 6. [Printed ante, p. 312.]
- 10. In section 7 of the said Act, for the words "Every public Amendment vaccinator or medical practitioner who shall have performed the operation of vaccination upon any child and shall have ascertained that the same has been successful," the following shall be substituted, namely:—
- "When a public vaccinator or medical practitioner has performed the operation of vaccination upon any child, and an Inspector or such practitioner has ascertained that the same has been successful, such Inspector or practitioner, as the case may be."
 - 11. In section 8 of the same Act,-
 - (1) for the words "public vaccinator", where they first occur, Amendment the word "Inspector" shall be substituted, and ef section 8.
 - (2) after the word "nor" the words "by any public vaccinator" shall be inserted.
- 12. In section 10 of the said Act, after the word "assistants" Amendment of section the words "or any Inspector" shall be inserted.

(Secs. 13-20.)

Amendment of sections 13A, 29A and 29B. 13. In sections 13A, 29A and 29B of the said Act, after the words "public vaccinator" the words "or Inspector" shall be inserted.

Amendment of sections 15, 16 and 33. 14. In sections 15, 16 and 33 of the said Act, after the words "public vaccinators," wherever they occur, the words "and Inspectors" shall be inserted.

Amendment of section 19.

15. In section 19 of the said Act, for the words "public vaccinator" the word "Inspector" shall be substituted.

Amendment of section 28.

16. In clause (a) of section 28 of the said Act, before the words "after vaccination" the words "to the operator (if a medical practitioner) or to an Inspector" shall be inserted.

Amendment of Schedule A.

- 17. In Schedule A to the said Act,—
 - (1) for the words "three months" the words "one month" shall be substituted, and
 - (2) for the words "Public Vaccinator" the words "Inspector" shall be substituted.

Amendment of Schedule B.

18. For Schedule B to the said Act the following shall be substituted, namely:—

Schedule B. [Printed ante, p. 326.]

Amendment of Schedule

- 19. In Schedule C to the said Act,-
 - (1) after the words "by me" the words "(or by a public vaccinator)" shall be inserted, and
 - (2) for the words "Public Vaccinator" the word "Inspector" shall be substituted.

Amendment of Schedule E.

- 20. In Schedule E to the said Act,-
 - (1) for the words "one year" the words "six months" shall be substituted, and
 - (2) for the words "the public vaccinator," in the fourth place in which they occur, and for the words "a public vaccinator", the words "an Inspector" shall be substituted.

BENGAL ACT 3 OF 1911. (The Bengal Local Government Act, 1911.)

CONTENTS.

PREAMBLE.

- 1. Short title.
- 2. Discharge of functions of Lieutenant-Governor by the Lieutenant-Governor in Council.
- 3. Signature of orders and proceedings.
- 4. Validation of past orders and proceedings.

BENGAL ACT 3 OF 1911.

(THE BENGAL LOCAL GOVERNMENT ACT, 1911.)[1]

(13th September, 1911.)

An Act to transfer functions of the Lieutenant-Governor of Bengal to the Lieutenant-Governor in Council.

WHEREAS the Governor General in Council has, with the approval Preamble. of the Secretary of State in Council, by Proclamation No. 5278, dated the 18th November, 1910,[2] made under section 3 of the Indian Councils Act, 1909, created a Council for the purpose of assisting the Lieutenant-Governor in the executive government of the Province of Bengal[3];

And whereas it is expedient to direct that the functions of the Lieutenant-Governor under enactments made by authorities in British India shall, with certain exceptions, be discharged by the Lieutenant-Governor in Council;

And whereas the sanction of the Governor General has been obtained, under section 5[4] of the Indian Councils Act, 1892, to the **55 & 56** Vict. c. 14. passing of this Act;

9 Edw. 7, c. 4.

> It is hereby enacted as follows:
>
> 1. This Act may be called the Bengal Local Government Act, short title. 1911.

2. [5] All functions of the Lieutenant-Governor of Bengal under any functions of enactment made by any authority in British India, or under any noti-Lieutenantfication, order, scheme, rule, by-law or form issued, made or prescribed the Lieutenunder any such enactment, shall be discharged by the Lieutenant-ant-Governor Governor in Council:

in Council.

Provided that the Lieutenant-Governor may, by written order, with the previous sanction of the Governor General in Council, direct that any such function shall be discharged by the Lieutenant-Governor personally.

[2] Published in the Calcutta Gazette Extraordinary, dated the 19th November

[3] This includes the Province of Bihar and Orissa. [4] See now s. 80A(3) of the Government of India Act.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1911, Pt. IV, p. 206; for Proceedings in Councils, see ibid, Pt. IVA, pp. 337, 346.

^[5] See also the Bengal, Bihar and Orissa and Assam Laws Act, 1912 and sections 46 to 52 of the Government of India Act.

(Secs. 3-4.)

Signature of orders and proceedings.

- 3. (1) Save in cases where an officer is specially empowered by or under any enactment other than this Act to sign an order of the Lieutenant-Governor in Council or the Lieutenant-Governor, every order and proceeding of the Lieutenant-Governor in Council or the Lieutenant-Governor shall be signed by a Secretary, Deputy Secretary, Under-Secretary or Assistant Secretary to the Government of Bengal.
- (2) Every order and proceeding so signed shall be presumed to have been issued in conformity with—
 - (a) section 2, or
 - (b) the orders made by the Lieutenant-Governor under the proviso to that section, or
 - (c) the rules and orders[1] made by the Lieutenant-Governor, with the consent of the Governor General in Council, 9 Edw. under section 3, sub-section (3), of the Indian Councils c. 4. Act, 1909, for the more convenient transaction of business in his Executive Council,

as the case may be.

Validation of past orders and proceedings.

4. All orders and proceedings under any enactment, notification, order, scheme, rule, by-law or form referred to in section 2, which were required by law to be issued by the Lieutenant-Governor of Bengal and have, before the commencement of this Act, been issued in the name of the Lieutenant-Governor of Bengal in Council, shall be deemed to be as valid as if they had been issued in the name of the Lieutenant-Governor.

^[1] These rules and orders have been superseded by rules and orders made by the Governor of Bihar and Orissa, under section 49(2) of the Government of India Act.

BENGAL ACT 4 OF 1911.

(THE CROTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) ACT, 1911.)

CONTENTS.

- 1. Short title.
- 2. Insertion of new section 2B in Act 6 of 1876.
- 3. Amendment of section 12.

BENGAL ACT 4 OF 1911.

THE CHOTA NAGPUR ENCUMBERED ESTATES (AMENDMENT) ACT, 1911. [¹]

(13th September, 1911.)

An Act further to amend the Chota Nagpur Encumbered Estates Act, 1876.[2]

Whereas it is expedient further to amend the Chota Nagpur Encumbered Estates Act, 1876;[2] 6 of 1876.

And whereas the previous sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, [8] to 55 & 56 Vict., c. 14. the passing of this Act;

It is hereby enacted as follows:—

- 1. This Act may be called the Chota Nagpur Encumbered Estates Short title. (Amendment) Act, 1911.
- 2. After section 2A of the Chota Nagpur Encumbered Estates Act, Insertion of 6 of 1876. 1876,[2] the following shall be inserted, namely:— 2B in Act 2B. [Printed at p. 377 in Vol. I of this Code.] VI of 1876.
 - 3. In the concluding paragraph of section 12 of the said Act, after Amendment the words "the publication of the order mentioned in section 2" the of section words " or the making of the order (if any) mentioned in section 2B, 12. shall be inserted.

^[1] LEGISLATIVE PAPERS.—For Statement of Objects and Reasons, see Calcutta Gazette, 1911, Pt. IV, p. 204; for Proceedings in Council, see ibid, 1911, Pt. IVA, pp. 246-247, 337 and 346.

[2] Printed in Vol. I of this Code.

^[3] Now see 80A(3) of the Government of India Act.